Background Materials for

Texas Commission to Expand Legal Services

Table of Contents

8. Elizabeth Olson, BUS. DEAL BOOK, *The 2-Year Law Education Fails to Take Off*, N.Y. TIMES, Dec. 25, 2015.

C. Forms, Self-Help Centers

1. Letter from Nathan L. Hecht, Chief Justice, Texas Supreme Court, to Wallace Jefferson, Chair, Commission to Enlarge Civil Legal Services (Dec. 28, 2015).

2. Lonnie A. Powers, *Closing the 'Justice Gap'*, THE HUFFINGTON POST (Jul. 11, 2014, 7:05 PM).

3. *Travis County Law Library and Self-Help Center,* AUSTIN LAW., Oct. 2015, at 4.

4. *Partnership Provides Accessible Legal Aid*, BIGISLANDNOW.COM, http://bigislandnow.com/2015/06/02/partnership-provides-accessible-legal-aid/, June 2, 2015.

D. Limited Scope Representation

1. *20 Things Judicial Officers Can Do To Encourage Attorneys to Provide Limited Scope Representation*, LIMITED SCOPE REPRESENTATION COMMITTEE OF THE CALIFORNIA COMMISSION ON ACCESS TO JUSTICE, https://www.courts.mo.gov/file.jsp?id=42958 (reprinted from *The Bench*, news journal of the California Judges Association, Summer 2003).

2. Katie Mulvaney, *Rhode Island Supreme Court Ruling Opens Door For Legal Help*, PROVIDENCE JOURNAL, June 22, 2015.

3. Modest Means Task Force, *Handbook on Limited Scope Legal Assistance*, AMER. BAR ASSOC., SECTION OF LITIGATION, https://apps.americanbar.org/litigation/taskforces/modest/report.pdf (page last visited Jan. 11, 2016).

E. Loan Payments, Debt

1. Editorial, *The Law School Debt Crisis*, N.Y. TIMES, Oct. 24, 2015.

2. Letters to the Editor, *The Debt Burden of Law School Graduates*, N.Y. TIMES, Nov. 2, 2015.

3. Isaac Bowers, *How Public Service Loan Forgiveness Helps Close the Justice Gap*, THE HUFFINGTON POST (Oct. 4, 2015, 1:59 PM).

F. Modest Means Proposal

1. Ashley Bebensee, *Wyoming State Bar Launches Modest Means Program*, CASPAR JOURNAL, Nov. 12, 2015.

2. *Modest Means Programs*, AMER. BAR ASSOC., http://www.americanbar.org/groups/lawyer_referral/resources/clearinghouse/modest.html (last visited Jan. 11, 2016).

G. Non-Lawyer Specialists

1. Robert Ambrogi, Opinions, *Who Says You Need a Law Degree to Practice Law?*, THE WASHINGTON POST, Mar. 13, 2015.

2. Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, ABA JOURNAL, Jan. 2015, at 2, *available at* http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the.

3. Committee on Professional Responsibility, *Narrowing the "Justice Gap": Roles for Nonlawyer Practitioners*, NEW YORK CITY BAR ASSOCIATION, http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf (June, 2013)

4. Report and Recommendations of the Supreme Court Task Force to Examine Limited Legal Licensing (Nov. 18, 2015), http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf.

H. Non-Profit Law Firms

1. AnnMichelle G. Hart, *Open Legal Services – The Nonprofit Law Firm Model Everyone is Talking About*, AMER. BAR. ASSOC.: THE AFFILIATE (Jan./Feb/2015), http://www.americanbar.org/publications/the_affiliate/2015/january-february/open_legal_services_nonprofit_law_firm_model_everyone_talking_about.html.

2. OPEN LEGAL SERVICES, http://openlegalservices.org/ (page last visited Jan. 11, 2016).

3. Nikki Somani, *Alumna's Nonprofit Law Firm Seeks to Make Legal Services Affordable*, DAILY BRUIN, May 22, 2015.

4. Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, March 7, 2013.

I. Pro Bono Requirements

1. Advisory Committee on New York State Pro Bono Bar Admission Requirements, Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments (Sept. 2012), http://www.nycourts.gov/attorneys/probono/probonobaradmissionreport.pdf.

2. Martha Neil, *Following New York's Lead, California Bar Officials Plan to Require Pro Bono Work for Admission*, AMER. BAR ASSOC. JOURNAL, March 13, 2015.

J. Veterans

1. Jonathan Baird and Daniel Feltes, *Legal Aid for Veterans*, NEW HAMPSHIRE BAR ASSOC., BAR NEWS, https://www.nhbar.org/publications/display-news-issue.asp?id=5465, Feb. 19, 2010.

2. *Thomas Jefferson School of Law Stands Up for Veterans*, THOMAS JEFFERSON SCH. OF L., http://www.tjsl.edu/node/14321, Nov. 12, 2015.

3. *Texas Lawyers for Texas Veterans*, STATE BAR OF TEXAS, https://www.texasbar.com/AM/Template.cfm?Section=Texas_Lawyers_for_Texas_Veterans (page last visited Jan. 11, 2016).

Tab A

Background

About
Issue History
International Perspective
Criminal and Civil Rights to Counsel
What Do Judges and State Bars Think?
Economic Benefits of Counsel
NCCRC Approach and Leadership
Contact Us

Featured NCCRC Work
Status Map
Selected Media Coverage
Resources
People are Talking...
Stay Informed
Support Us

THE JUSTICE GAP

Every year, millions of low-income people throughout the United States struggle through serious, complex civil legal disputes without the help of a lawyer. Most low-income households find that private counsel is unaffordable and free legal aid is unavailable due to the high demand and legal aid programs' limited time and resources. More than 45 million individuals have incomes low enough to qualify federally funded legal aid, but equal access to justice is often hard to find.

STUDIES OF THE JUSTICE GAP

The Legal Services Corporation (LSC)—the largest federal source of funding for free legal representation in civil cases—undertook a comprehensive study that documented the existence of this "justice gap". In a report published in 2005 and updated most recently in 2009, LSC found that:

- LSC-funded programs turn away nearly one million cases annually due to lack of resources; untold additional clients never find their way to the programs.
- Each year fewer than 20 percent of low-income people with civil legal problems obtain the legal assistance they need.
- Counting all (not just LSC) legal aid programs, the U.S. has one lawyer for every 6,415 low-income people but one lawyer for every 525 people in the general population.

In addition to the LSC report, many organizations have undertaken to analyze the justice gap in their particular state. Some examples include:

- Maine (2007 report of Justice Action Group): of those able to receive some help, 85% only received only brief service or consultation. At one state legal services provider, 83% of low-income individuals seeking assistance were turned away.
- New Jersey (2009 report by Legal Services of New Jersey): only 21.7% of low-income people seeking assistance obtained legal help.
- Washington (2003 report of Washington State Supreme Court's Task Force): low-income people in the state face 85% of their legal problems without an attorney.
- Wisconsin (2007 report of Access to Justice Committee) (80% of low-income people with legal need unable to obtain help).
- New York (2013 report of the Task Force to Expand Civil Legal Services in New York): at best, only 20% of low-income New Yorkers have access to legal assistance.

THE U.S. FARES WORSE ON THE JUSTICE GAP THAN OTHER COUNTRIES

Many countries have long-established civil legal aid programs that are adequately funded by the government and ensure ample coverage. In the U.S., where civil counsel is not guaranteed, funding for legal aid programs compares poorly to other industrialized nations. For instance, England spends twelve times as big a portion of its gross domestic product on civil legal aid as the U.S., where federal funding of legal services has declined by 50 percent over the last quarter century. Read more about this in our section on international perspective.

Standing Committee on The Delivery of Legal Services

ABA GROUPS

Standing Committee on the Delivery of Legal Services

- News & Announcements
- Events & Webinars
- Initiatives & Awards
- Resources
- About Us
- Contact Us
- Reinventing the Practice of Law
- The Legal Access Job Corps

ABA Leadership
Centers & Commissions
Committees
Departments & Offices
Divisions
Forums
Sections
View All Groups

Standing Committee on the Delivery of Legal Services

About the Standing Committee

The ABA Standing Committee on the Delivery of Legal Services has the mandate to improve access to lawyers and legal services for those of moderate incomes – those who do not qualify for legal aid yet lack the resources for full legal representation.

Announcements

2016 Brown Award Now Open

The Delivery Committee is now accepting nominations for the 2016 Louis M. Brown Award for Legal Access which honors programs and projects dedicated to matching the unmet legal needs of the middle class and those of moderate incomes with lawyers who provide affordable legal information, services and representation. Deadline is Dec. 11.

Client-Centric Legal Services: Getting from Here to There

This conference, which took place August 14-15 in Denver, focused on pivoting practitioners into 21st Century problem-solvers by enhancing engagement and exploring better client-centric compensation methods and innovative delivery models. Learn more and access conference materials here.

Incubator Services

The Committee is coordinating law school and bar-sponsored incubators and residencies that foster the development of practices for newly admitted lawyers. For more information or to be included on the Incubator LISTSERV, contact sara.smith@americanbar.org

Latest Developments

New ABA Ethics Opinion on Unbundling

The ABA has released an ethics opinion addressing the obligations of a lawyer when communicating with a person who is receiving limited-scope representation. The opinion recommends that attorneys ask pro se litigants whether they are being represented by counsel to avoid violating the "no-contact" rule. Read Formal Ethics Opinion 472 here.

Vermont Futures Commission Final Report and Recommendations

The Vermont Joint Commission on the Future of Legal Services recently released a report in which it recommends, among others, incentives for lawyers to practice in rural areas, assisting lawyers with technology and creating models of unbundling and creative fee structures.

Preliminary Results of Self-Represented Litigants Study

The Institute for the Advancement of the American Legal System (IAALS) has shared some preliminary results of their qualitative study, "Cases Without Counsel: New Project to Explore Experiences of Self-Representation in U.S. Family Court." The final

Meet the Committee

For details on the Committee's activities, view its Informational Report to the House of Delegates.

For a complete history of the Committee, click here.

See the Committee's roster for a list of its members, liaisons and Advisory Council membership.

Overheard at the Bar

Virtual Law Practice: Bootstrapping a Young Lawyer's Practice (Michigan Bar Journal, November 2015)

Creating a Client-Centered Practice (Illinois Bar Journal, November 2015)

BOOK REVIEW Reinventing Law Practice and Enhancing Legal Services: Where Are We Headed? (The Vermont Bar Journal, Summer

analysis will be released in early 2016.

New Research Shows Benefits of Unbundling

Last year the Legal Services Board and Legal Services Consumer Panel conducted a qualitative study looking at the unbundling experience from the perspective of consumer, provider and judge. The report is now available from the LSCP here and the LSB here.

Judge Allen Webster Jr. to Receive 2015 ABA Difference Maker Award

The award "honors an attorney living or deceased who made a significant contribution to the legal profession through service to the profession" and will be presented to the former Delivery Committee member at the GPSolo 2015 Solo & Small Firm Summit in September.

Nebraska Bar Brings Lawyers to Rural Counties

The Grand Island Independent discusses the short supply of lawyers in some rural areas and what the Nebraska State Bar Association is doing about it in their state to increase access to legal representation.

Call for Comments on Ghostwriting

The Rhode Island Supreme Court has invited comments on the subject of its recent decision in which it held that an attorney may provide limited scope representation, but may not not ghostwrite pleadings, motions or other written submissions for a pro se litigant unless the attorney signs the document and discloses his or her identity and the extent of the assistance. Comments should be submitted to the Clerk of the Supreme Court by January 15, 2016. Read more here.

National Summit on Innovation in Legal Services

Videos of several presentations from the National Summit on Innovation in Legal Services are now available here. The Summit, held in early May, was co-sponsored by the ABA Presidential Commission on the Future of Legal Services and Stanford University School of Law. See the related ABA Journal article here.

Report from Ohio Task Force on Access to Justice

A recently issued report from the Ohio Supreme Court Task Force on Access to Justice advocates for self-help centers and unbundled legal services, as well as recommends requiring that an "Access to Justice Impact Statement" accompany rule changes. Read the March 2015 Report here.

Maryland Expands Unbundling

The Maryland Court of Appeals has amended its Rules of Procedure and Lawyers' Rules of Professional Conduct, implementing recommendations by the Maryland Access to Justice Commission to expand limited scope representation in the state. See the recent Rules Order here.

Canadian Bar Association Creates Legal Health Checks

The CBA's Access to Justice Committee has developed a series of "legal health checks" to help the general public proactively assess their legal health and identify legal problems early on. You can find all 12 "cards," available on a variety of issues, on the CBA's Equal Justice website.

2015 James I. Keane Memorial Award

The ABA Law Practice Division eLawyering Task Force has selected the law firm of Houghton Vandenack Williams in Omaha, Nebraska as the recipient of the 2015 James I. Keane Memorial Award for excellence in eLawyering. The award will be presented during the ABA Techshow on April 16th.

Addressing the Rural Lawyer Gap

A recent Daily Report article discusses how Georgia is looking at Project Rural Practice in South Dakota as a guide to address their own shortage of rural lawyers, and how legislation has been introduced in Georgia to address the issue.

Unbundling Webinar Featured in ABA E-News

YOUR ABA, e-news for members, recently featured M. Sue Talia in a discussion about limited scope representation. The discussion included limitations, ethical considerations, and trends that led to its demand. It also highlighted the recent ABA webinar from the Delivery Committee on unbundling, also featuring Talia.

2015)

It's All About Documenting Scope (The Advocate of the Idaho State Bar, September 2015)

The Intersection of Innovation and the Law: How Crowdfunding and the On-Demand Economy are Changing the Legal Field (Wyoming Lawyer Magazine, August 2015)

Collaborative law for low and modest means clients (Mass Bar Lawyers Journal, August 2015)

A judge's view on the benefits of 'unbundling' (California Bar Journal, July 2015)

The Uniform Collaborative Law Act: Michigan Not Left Behind (Michigan Bar Journal, June 2015)

As I See It: It's Time for Creative Disruption (Wisconsin Lawyer, May 2015)

Making Limited Scope Legal Services Work (California Bar Journal, May 2015)

Maximizing Your Recovery in Fee-Shifting Cases (Illinois Bar Journal, February 2015)

Lessons Learned from Peacemaking: Mediation as a Healing Art (Arizona Attorney, February 2015)

New attorneys learn resilience in incubator projects (California Bar Journal, February 2015)

More

Blog Discussions

Access Legal Care on Increasing Affordable Access to Legal Services

Michigan: Flat Fees, Automated Forms and Affordable Payment Plans Combine to Create a Profitable Practice for Modest Means Clients.

Celebrating 50 Incubators, and Raising A Research and Evaluation Challenge

In light of the 50th law firm incubator being posted in the Delivery Committee's resources, Richard Zorza raises questions about the impact programs have on lawyers and access to justice.

List of Tweets About Client-Centric Legal Services Conference

A post chronicling some of the Tweets from attendees of the Client-Centric Legal Services: Getting from Here to There conference that took place August 14-15.

What are Client-Centric Legal Services?

Richard Granat dicusses the upcoming conference in Denver, Colorado on August 14 -15, titled: Client-Centric Legal Services: Getting From Here to There.

The Uberization of Legal Services

In his eLawyering Blog, Richard Granat discusses how unbundling will grow as a trend within the marketplace.

No Ghosts In Rhode Island

The Legal Profession Blog discusses the Rhode Island Supreme Court decision holding ghostwriting improper.

The Low Down on Low Bono: Identifying a Need and Starting up a Nonprofit Organization

In Their Own Words...A Video Featuring Incubator Lawyers

"In Their Own Words" shows how lawyers from around the country share the benefits of incubator projects - highlighting opportunities for public service, the value of practice management training and mentor relations, and the advantages of camaraderie with one another. View the video or download the file here.

2014 Year in Review

A lot happened last year with the delivery of legal services for those of moderate means. This annual overview highlights articles, reports, policies, initiatives, research and more from 2014.

More

Niloufar Khonsari, founder of Pangea Legal Services, talks about how nonprofits can fill a gap *and* be sustainable.

Illinois "Safe Habor" Policy for SRL Assistance Moves the Ball Foward

Richard Zorza discusses the new Illinois Supreme Court Order clarifying the types of assistance court staff and volunteers can offer self-represented litigants.

Nice Development for Incubators

Richard Zorza discusses how the International Justice Center for Postgraduate Development at Touro Law Center and Lexis have announced an arrangement by which lawyers in incubators will get free Lexis tools for a year.

More

"Too Many Lawyers? Too Few Jobs?
Bridging the Justice Gap"
by
Phoebe A. Haddon
Dean and Professor of Law
University of Maryland Francis King Carey of School of Law
to
American Law Institute, 2014 Annual Meeting, Washington, DC

Good afternoon. Today I would like to talk with you about the justice gap...a term which describes the fact that, according to our best calculation —and a *guess* is really all it is--there may be more than 100 million people in our country who don't have access to an attorney or legal services they need to resolve a justiciable conflict.

Some of those touched by the justice gap fit our traditional expectations: they are indigent or poor people charged or erroneously convicted of criminal offenses.

But as the justice gap has grown, it's come to include individuals of moderate income—including members of the middle class--struggling to resolve conflicts on their own.

My first glimpse of the magnitude, complexity and urgency of this problem came several years ago, soon after I became dean of Maryland Carey Law, when I listened to a panel discussion we hosted at the Law School. I heard Paul Grimm, then a federal magistrate and now a district judge in Maryland, describe his struggle to mete out justice to litigants who appeared in his court without representation.

It was immediately apparent that Judge Grimm's courtroom wasn't unique. In fact, his fellow panelists--several local state judges-- were embroiled in the same problem.

All of them candidly discussed the complexities of attempting to "level the playing field", as they put it, for *pro se* litigants – from drafting do-it-yourself manuals to translating and simplifying court rules.

The judges' stories were heart-wrenching because of the plight of the litigants. They were also troubling, since the judges were clearly frustrated, trying to weigh the competing rights and interests at stake in civil controversies. And the stories were especially disturbing because they were taking place in Maryland, a recognized leader in addressing the problem of access.

Thanks to the vision and commitment of Robert Bell, the recently retired Chief Judge of Maryland's highest court, the state has a longstanding, 46-member Access to Justice Commission, one of few such state commissions housed within the judicial branch—and, thus, able to have an immediate impact on court practice.

Pamela Cardullo Ortiz, a Commission member, has observed: "The *hall mark* of a healthy democracy is one in which individuals can exercise their rights to enforce the protections, privileges, and opportunities available to them under the law. They can only do so, however if they can access the justice system through which those rights are enforced."

Maryland has taken many steps to increase access to justice and protect democracy's health.

For example, to help people representing themselves, it has self-help centers in all its circuit-court locations and its district court.

The state has a network of public law libraries ("People's Libraries") and a network of local pro bono committees; all of the 36,000 lawyers in Maryland must report their pro bono activity annually.

When interest rates plunged a few years ago, it passed legislation to increase the surcharge on court filing fees to fund its depleted Lawyers' Trust Accounts (IOLTA), which had supported the state's civil legal service providers.

During the recession it trained hundreds of lawyers in how to provide pro bono help to home owners at risk. And this fall the Access to Justice Commission will consider a report on how to implement a broad right to counsel in civil matters.

Despite this work, 60% of domestic cases in Maryland have at least one self-represented litigant. In 40% of those cases <u>both</u> parties are unrepresented. Fully three-quarters of domestic trials have at least one participant without a lawyer.

Sadly, this lack of representation is typical of other states.

In the Massachusetts Supreme Judicial Court, 75% of parties in the housing, family and probate courts were representing themselves.

In NY, 99% of tenants were unrepresented in eviction cases and 97% of parents were unrepresented in child support proceedings. Sixty percent of homeowners in foreclosure are unrepresented when attending mandatory settlement conferences.

There are other disturbing signs of under-representation. Nationally, in 2009, about half of all appeals filed in federal courts were done so without representation, largely because litigants were unable to afford counsel.

And we know that approximately 20% of the total U.S. population is by law eligible for legal representation. Of these 60 million people, about half—or 30 million--who actually seek legal counsel are denied it every year. Why? State and federal programs are underfunded or there

are simply no pro bono lawyers available. Those turned away are overwhelmingly women, veterans, the elderly and families with children.

According to Professor Deborah Rhode, of Standford Law, approximately 80 percent of the legal needs of poor individuals and a majority of the legal needs of middle-income Americans remain unmet. Millions of people cannot afford to pay the $200 to $300 per-hour fees often charged for the most routine legal services.

Three points about the acute lack of adequate representation across income groups in both criminal and civil matters are worth further noting:

First, the justice gap is taking place at the same time that pundits talk about a "glut" of lawyers.

By these critics' estimates, we have been producing about 20,000 more new lawyers every year than "the market" demands.

I'll accept that assertion—as long as our definition of "market" is restricted to organizations that provide permanent, full -time employment at healthy six-figure salaries to individuals with newly minted JDs.

True, there aren't nearly enough of these positions; they began to evaporate a few years ago, just as the escalating costs of law school led students to incur increasing amounts of debt.

The fact is, we have a bitterly ironic mismatch: On the one hand, we have thousands of highly trained but unemployed or under-employed recent law school grads. And, on the other, we have millions of moderate and lower-income people who need legal counsel and others who may not know they are at risk because of self-representation.

Our challenge as a profession—and a DEMOCRACY—is to change that...to redistribute the skills of legal service providers to a significantly larger portion of our population.

But at the same time, we must contain law school costs...offer loan forgiveness through federal, state, non-profit or law school endowed funds...and explore changes in fee arrangements and other innovations such as low-bono and unbundled services—all steps that will enable young lawyers to engage in access to justice work.

The second point worth making is that there is no uniform national compilation of statistics on unrepresented litigants. None.

Data from the states—like those I've cited--may appear random and thus not comparable; some of the figures are certainly outdated. But even haphazard reporting confirms a national access crisis.

The absence of uniform statistical data on unrepresented litigants prevents us from fully grasping the dimensions of the access problem, and the complexities of solutions that might actually succeed; it compromises our ability to make sound strategic decisions. We don't know how to allocate scarce resources or which kind of initiatives ought to take priority over others. We need sustained, evidence-based studies to inform our access work.

For example, as Professor Rhode points out, does access to justice mean access to legal services or access to a just resolution of legal disputes? They are different.

Access—or the lack of it—is also a function of the population to be served. Unbundling services can reduce costs, but lower fees won't help clients who don't understand they have a legal need. Easily available court documents and call stations for routine land lord-tenant disputes may not be useful to immigrants or others who have language or literacy barriers.

Even with inadequate information, it's obvious that our justice gap is actually a justice chasm, so wide and so deep that only the wealthiest individuals among us can bridge it.

Finally, there are signs all around us that our country's legal system faces serious problems that go beyond the costs and complexities of service delivery to the poor and middle class.

- Notably -- We incarcerate more people than any nation and the majority of our inmates are black and male. As Michelle Alexander, author of *The New Jim Crow* observes, racial bias can be linked to government drug policies—policies that have destroyed communities and drastically reduced the opportunities for the incarcerated ever to lead productive lives.

- And, whether or not you agree with the perspective of commentators about a "glut" of lawyers, it is apparent that structural changes are transforming the business model of our profession. Spend even a few hours reading Richard Susskind, Paul Lippe or Bruce McEwan and it's clear that we are in the midst of replacing a system based on the traditional law firm hierarchy and fee arrangements with new approaches that are the consequence of technology, globalization and cost conscious clients.

How do we best respond to the challenges I've described?

I believe that they demand important, collaborative work from the bench, the bar and the academy. I also want to argue that law schools, and the larger universities in which many of them reside, should assume a more active role in defining the future of the profession and of legal education. Public institutions-- given their history, mission and responsibility to serve the citizens who support them—could lead the way in defining more clearly the causes of the justice gap and the strategies for bridging it.

There are signs that the profession has begun to grasp the importance of the justice gap, particularly as it touches more people of moderate incomes and the middle class.

It appears that the bar may be more receptive to innovative service delivery and willing to collaborate with law schools and public interest organizations in gathering the solid, baseline "access to justice" data that is so critical.

For example, in 2012, the ABA gave its annual award for access to legal services to a for-profit, virtual firm in suburban Detroit that uses of-counsel attorneys with existing practices to provide contract reviews and other common legal services to middle class people who could not otherwise afford them. Flat fees hover in the $300 to $500 range, not thousands.

At about the same time, after years of debate, the judiciary in Washington State created a new category of legal service provider: a Limited License Legal Technician, who can help with court forms, procedures, timelines, and pleadings. Although they can't represent clients, technicians can alleviate some of the most frustrating aspects of *pro se* litigation for both judges and unrepresented litigants.

The bar has also started to work with law schools to address the "mismatch"—the daunting job prospects for many recent graduates and the unmet need for legal services-- by actively participating in law school incubators, firms and other new venues for individuals needing representation.

For example, Maryland Carey Law, works with a local public interest law organization to offer Just Advice, a service that provides 30 minutes of legal advice and referrals for $10 at roving locations throughout Baltimore and across the state. Our students team up with practicing attorneys who donate their time and provide one-on-one advice to clients. The students manage all the business aspects of the program—they screen clients, run the office and promote the service.

Maryland Carey Law also runs an incubator program with Civil Justice, a network of small firms and solo practitioners who help train new grads how to serve low-income clients and successfully manage this kind of practice.

The project is similar to one at Rutgers Law Newark, which now runs a law firm staffed with recent graduates who have passed the bar [an idea first proposed by my former Maryland Carey Law colleague, Rob Rhee]. Supervised by experienced attorneys, the fellows at the firm provide a range of legal services at well below market rates to low and moderate-income clients.

I like these programs because they teach third-year law students or young alumni how to manage a practice, work in organizations and acquire the business skills needed to support themselves. They also expose students to devices for working with low-income clients, like sliding pay scales, alternative billing arrangements, contingency work and fee-shifting statutes.

Finally, the bar, law schools and nonprofit organizations have joined forces to address the lack of evidenced-based empirical work on the justice gap.

In 2011, the American Bar Foundation hired Rebecca Sandefur, a sociologist at the University of Illinois College of Law, to survey the patchwork of civil legal services in all the states. The study found that "geography is destiny"-- the civil legal resources available to an individual are determined largely by where they happen to live.

In addition to Sandefur's work, the US Justice Department also created an Access to Justice Office in 2010. A year later, the American Bar Foundation, Stanford's Center on the Legal Profession and the Harvard Program on the Legal Profession created a Consortium on Access to Justice—a group committed to promoting research and teaching on access to justice. Deborah Rhode is a vital contributor and Maryland Carey Law and a number of other diverse institutions participate.

These are all positive, important steps, but they are also comparatively small, isolated and incremental.

As the dean of a public law school and soon-to-be chancellor of a public research university, it should not be surprising that I'm particularly interested in how law schools can harness the work of students and faculty in the social sciences and humanities to strengthen law schools' role in defining and successfully bridging the justice gap.

Here are some obvious departure points for law schools that build on their existing strengths:

As communities of scholars, law schools should lead the research that focuses on access to justice here and internationally and suggest new solutions, including the use of alternative dispute mechanisms.

This knowledge, combined with data-driven analysis of where the justice gaps are greatest, would allow law schools to conduct an access-to-justice audit of their curricula that went beyond clinical law to include securities, banking, tax and businesses courses as well as the transactional services of consumer law—practice areas that touch not only the middle class but also affect indigent or very poor people.

Law schools must learn to collaborate. There should be no reason why Maryland Carey Law duplicates an innovative clinic at the University of Baltimore, just a few miles up the road. We need cooperating academic consortia like those among undergrad and grad institutions in New England and outside of Philadelphia.

Law schools are also laboratories--they could be what incubators or start ups are to the technology sector: thinking outside of the box, exercising their academic freedom--and their imaginations!--on behalf of the underserved.

Using evidenced-based research—and the assistance of courts—law schools could reshape their clinical programs to meet the most pressing legal needs of their communities—a benefit not only to clients, but to students, who would gain practical experience addressing the most acute legal needs in a given geographical area. Research could also help us identify and formalize best practices in service delivery.

Finally, we must do more work as reformers and lobbyists to shine a bright, public spotlight on the problem of access to justice—one that reaches well beyond our profession.

For example, working with an ABA survey done in the 70s-- the only data available—Rebecca Sandefur discovered that cost wasn't the only factor which kept people of moderate means from seeking counsel. Some people didn't know how to find a reputable lawyer; others didn't recognize they needed one.

This finding suggests that we need a vast public education campaign about the importance of law in our everyday lives. Adolescents need more than a basic civics course about the three branches of government and when to vote—though that would help.

As models, I'm thinking of the large, public health campaigns that got Americans to quit smoking, cut their intake of red meat and worry about their own weight and that of their children. Thank you, Michelle Obama, for "Let's Move", your campaign to end childhood obesity.

Our profession has seen nothing remotely comparable. And I believe it should.

Clearly, millions of Americans do not grasp how the law can be of value to them or their loved ones—perhaps as a consequence of a meager education or pundits who have bemoaned our litigious society and devalued the service of lawyers in settling disputes and ensuring justice.

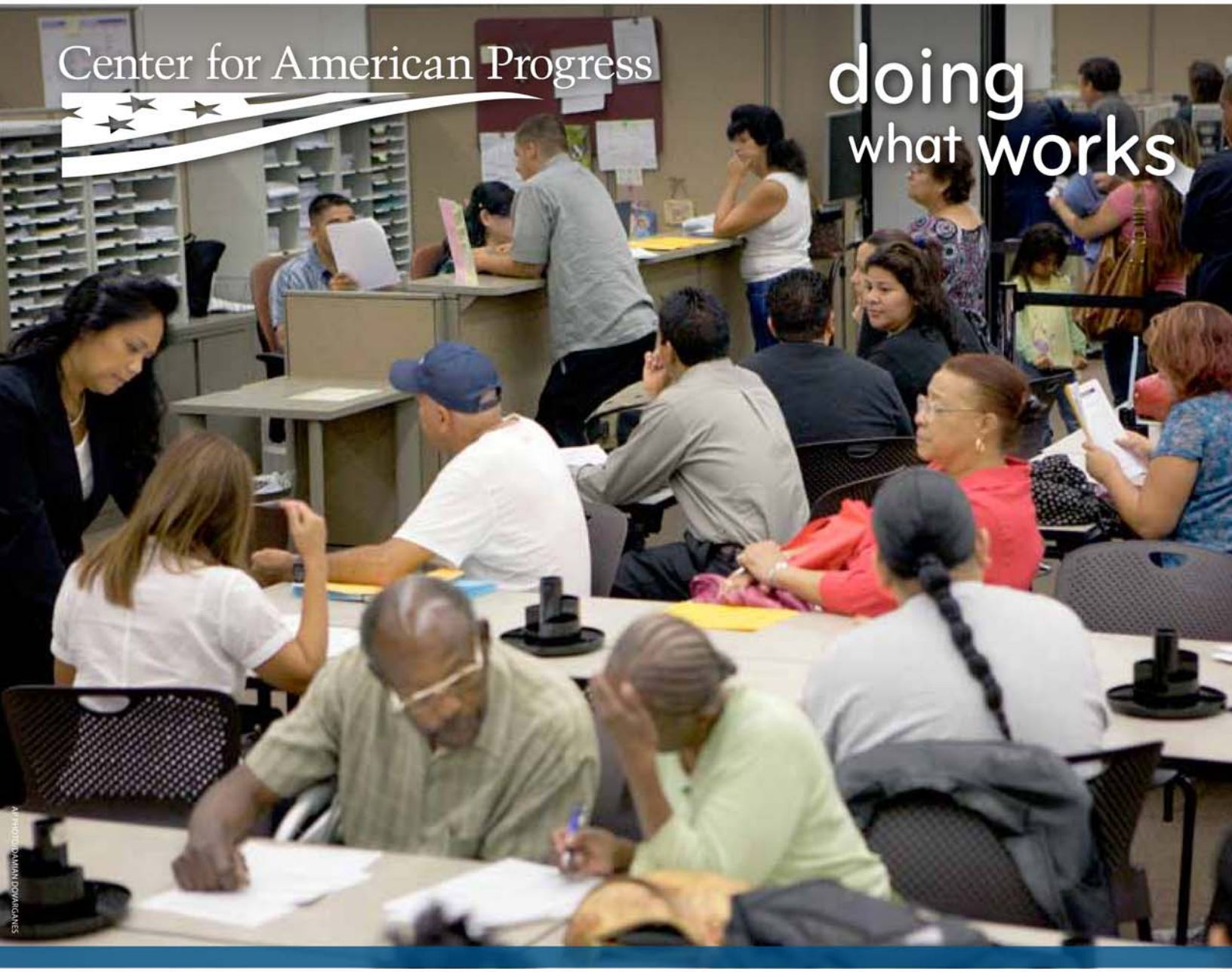
But we must acknowledge our own role. Once, people valued our profession for the <u>work</u> of its practitioners—they didn't envy wealth or power; they admired lawyers' <u>work</u> and how it could protect or advance the lives of those who were neither wealthy nor powerful.

But today, for many people, law is not power or even order over evil and anarchy. And they believe it has nothing to do with the poor or marginalized. Many would be surprised to learn that law—at least in America—is founded on the principle of equality and justice for all. For them, justice is merely an elusive phantom. Literally millions of Americans are without access to justice for lack of financial resources, information or will in the face of overwhelming obstacles, despite the fact that our nation was founded on the conviction of "justice for all." It is the responsibility of every lawyer in this room to deliver on that promise.

I'm willing to try. I hope you are too.

Center for American Progress

doing what works



AP PHOTO/DAMIAN DOVARGANES

Closing the Justice Gap

How innovation and evidence can bring legal services to more Americans

June 2011

WWW.AMERICANPROGRESS.ORG

Center for American Progress

Closing the Justice Gap

How innovation and evidence can bring legal services to more Americans

June 2011

doing what works

CAP's Doing What Works project promotes government reform to efficiently allocate scarce resources and achieve greater results for the American people. This project specifically has three key objectives:

- Eliminating or redesigning misguided spending programs and tax expenditures, focused on priority areas such as health care, energy, and education
- Boosting government productivity by streamlining management and strengthening operations in the areas of human resources, information technology, and procurement
- Building a foundation for smarter decision-making by enhancing transparency and performance measurement and evaluation

Front cover: People gather at the Los Angeles County Superior Court's Resource Center for Self-represented Litigants at the Stanley Mosk Courthouse in Los Angeles. More people are opting to represent themselves in civil court matters because they don't have the money to afford an attorney.

Contents

The full Center for American Progress report, Closing the Justice Gap, can be found here:

https://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf

Tab B

Changes to Law School Structure

THE CHRONICLE OF HIGHER EDUCATION
Administration

January 8, 2012

At Meeting, Federal Judge Hands Down a Sharp Opinion About Law Schools

By Katherine Mangan
Washington

If legal educators were hoping for a break from the battering they've been receiving in the trade and mainstream press, the critiques that Judge José A. Cabranes dished out Friday during a lunchtime talk at the Association of American Law Schools' annual meeting were probably tough to swallow.

Judge Cabranes, who serves on the U.S. Court of Appeals for the Second Circuit in New York, has taught law at Rutgers University, served as general counsel of Yale University, and been a trustee at several universities. He was invited to speak by one longtime admirer—Michael A. Olivas, the association's outgoing president—and introduced to the audience by another, U.S. Supreme Court Justice Sonia Sotomayor.

So when Judge Cabranes complained that law professors were spending too much time on esoteric research at the expense of core courses, as well as poking their noses into disciplines where they didn't belong, his words stung.

But they also rang true to many in the audience. Although Mr. Olivas didn't agree with all of the judge's observations, "his remarks struck home," Mr. Olivas said.

Judge Cabranes told the group that too many law-school graduates are entering the profession unprepared to practice law and even unfamiliar with the work that lawyers do.

The average debt upon graduation is more than $100,000, he added: "For years, figures like these raised eyebrows. They now also raise blood pressures."

Next, he took aim at the interdisciplinary programs and dual degrees that have become increasingly popular at law schools. He accused law professors, many of whom have joint appointments with other colleges, of veering toward "intellectual hegemony."

"Law faculty have tried to extend their reach to all corners of the university in search of problems to solve and victims to help," he said. As globalization fever has hit law and other professional programs, professors have reached across national borders and, in the process, lost their focus on core subjects, he said.

After questioning the value of much of the third year of law school, he offered some suggestions. Law schools could offer two years of basic law courses followed by an apprenticeship in the third year. Law firms could hire students at much lower salaries than they currently pay junior associates, and bill them out for lower rates that clients would welcome.

He acknowledged that such a model "may make sense for students, law firms, and clients, although not necessarily for the profits of law schools."

Students, he said, could graduate with a third less debt, start earning money a year earlier, and learn the nuts and bolts of being lawyers sooner.

Critics would likely object that law schools were acting like trade schools, he said, adding that he didn't see anything wrong with a professional school's teaching job-specific skills. To keep everyone happy, he said, the apprenticeship model would be optional, and students who preferred a traditional three-year program could stay on an extra year.

Judge Cabranes also had an answer for those who say law students already have the opportunity to practice their skills in law-school clinics. He said students sometimes immerse themselves in clinics before they have taken foundational courses, citing the example of a student who worked in a low-income housing clinic before she had taken a course in property law.

While these factors have contributed to a crisis facing law schools

today, "they've also opened tremendous opportunity," he concluded, calling on law schools to return foundational courses to the center of the curriculum and to "resist intellectual temptations to which many have fallen prey."

16 Comments

Sort by Oldest ▾ Recommend Share

Join the discussion…

richardtaborgreene · 3 years ago
but it is boring for faculty to teach students job-direct skills—-BOOOOORRRRRIIIIIIINNNNNNGGGG——plus quite a few law faculty are not capable of operating in law effectively if you get detailed about it.
7 ▲ ▼ · Reply · Share ›

touchingthestone ➔ richardtaborgreene · 3 years ago
If what you say is true (and I'm not questioning it), then faculty should love the internship program, because it gets those pesky students out a year earlier, interning in law offices. The reduced course load opens up free time for the faculty to do what they want.
▲ ▼ · Reply · Share ›

dank48 · 3 years ago
You mean there are people who think law schools *aren't* trade schools?
11 ▲ ▼ · Reply · Share ›

Unemployed_Northeastern ➔ dank48 · 3 years ago
Yes. Sadly, they are called "law school deans."
9 ▲ ▼ · Reply · Share ›

3224243 · 3 years ago
Aren't business, law and medical schools all trade (a.k.a. professional) schools?
13 ▲ ▼ · Reply · Share ›

phonenear ➔ 3224243 · 3 years ago
Amen. I long for a robust distinction between "trade school" and "professional school" (other than tradition and wrapping one's area in greater perception of prestige) and have the sense that my plumber is more dedicated to, say, off-hours service to people who depend on him than are most of our current physicians and physicians in training in the age of shift work in the med biz.
3 ▲ ▼ · Reply · Share ›

11182967 · 3 years ago
Law is a profession--like medicine, architecture, engineering, and teaching--which has grown out of a craft. Crafts become professions as it is recognized that formal education needs to be added to the "practical" (ie, "practice") steps of training by which someone moves through the stages of apprentice and journeyman to master (in the profession of teaching in higher education we call these steps teaching assistant/teaching fellow; instructor/assistant professor; and associate professor/professor, respectively).

The addition of formal education becomes necessary whenever the knowledge underpinnings of a craft reach a degree of theoretical complexity such that a practitioner can no longer become a master merely by observation, emulation, and practice. The clearest example of this transition from craft to profession is

probably the modern combination of university education and internship/residency developed subsequent to Abraham Flexner's assessment of medical training in the early 20th century.

Once the—increasingly necessary—grounding in formal knowledge underlying practice becomes embedded in the preparation for a

see more

16 · Reply · Share ›

vdolgopolov · 3 years ago

Here's a novel idea - bring back the five-year undergraduate LL.B. programs!

There's not an overwhelming reason for us to keep law students in an unrelated undergraduate major, and then push them into a three-year J.D. program. A five-year LL.B. could incorporate two years of general education and other university requirements and three years of legal training, including internships over summers, get students into the workforce faster, and reduce their higher education loans considerably.

14 · Reply · Share ›

sicetnon ↗ vdolgopolov · 3 years ago

The introduction of the J.D. degree in the 70s began (or at least illustrated) the drift away from the professionalism of the law. Now, lawyers could call themselves "Doctors," at least to themselves. No one was fooled. The traditional LL.B. (Bachelor of Laws) degree described perfectly what a lawyer was--a postgraduate professional degree holder, not a research trained legal scholar; that why some schools offer a Ph.D. in law, a very different degree and career path.

3 · Reply · Share ›

Unemployed_Northeastern ↗ sicetnon · 3 years ago

I thought the growth of the JD in the 1970's was also (at least partially) driven by the desire to give law students a better class of deferment from Vietnam. That might be an urban legend, though. Nowadays, the LLM (the one-year terminal law degree acquired after a JD) is simply used as a cash cow on top of the law school cash cow. For the most part, LLM students are packed into regular JD classes, write no dissertation or thesis, and fork over another $55k - $70k for the pleasure, depending on the program. It also serves as a one year crash course for foreign attorneys, as is required before they can sit for a bar exam in many states.

· Reply · Share ›

vdolgopolov ↗ Unemployed_Northeastern · 3 years ago

In addition to the deferment story, I've heard that another reason that programs were moved to JD was getting graduates a better rank and payscale for federal and state positions.

· Reply · Share ›

drj50 ↗ sicetnon · 3 years ago

Law was not the only discipline that "bumped" its initial degree at that time. Students in law and theological schools wondered why they had to go three years after a bachelor's degree to get no more than a second bachelor's (LL.B. or B.D.), while their friends in medical and other graduate schools got doctorates (or at least master's degrees). The classical idea that the first degree in a discipline was a "bachelor's" had been forgotten, and the fact that both law and theological schools required the undergraduate degree as a prerequisite seemed to make their degrees in some sense "graduate" degrees.

1 · Reply · Share ›

sabbatical · 3 years ago

At least in the "best" law schools, law school faculty (except those who run clinical, writing, and trial advocacy programs -- the low-status stepchildren of law schools) aren't hired because they know how to practice law. They're hired because they were on Law Review and clerked for a presitigious judge. They know how to read cases and write about them, which is what they teach students. Unfortunately, that's only a fraction of what real lawyers do. And it's a fraction that students can learn about in a year or maybe two. As Judge Cabranes notes, it certainly doesn't take three years to learn how to read cases and write about them.

Canada requires graduated law students to "article," which is a form of apprenticeship; it makes sense.

9 · Reply · Share ›

Unemployed_Northeastern ➔ sabbatical · 3 years ago

"One 2010 study of hiring at top-tier law schools since 2000 found that the median amount of practical experience was one year, and that nearly half of faculty members had never practiced law for a single day."

"Law schools, especially those in the upper echelons, have been smitten by Ph.D.-J.D.'s for more than a decade.... [A] number of veterans of legal practice who failed to land tenure-track jobs say that experience was a stigma they could not beat. 'It can be fatal, because the academy wants people who are not sullied by the practice of law,' said a longtime lawyer and adjunct professor, who did not want to be identified because his remarks might alienate colleagues."

What They Don't Teach Law Students: Lawyering, David Segal, New York Times, 11-19-2011

2 · Reply · Share ›

facebook-766034178 · 3 years ago

I continue to see these types of arguments from people who only hire students from about two or three law schools. Do they really know what is happening in law schools? Cabranes, for example, seems only to hire from Yale. I also suspect certain professors at Yale feed clerks to him. Also, these students probably participate on journals that do not publish doctrinal works. Maybe judges and other employers should diversify their hiring base. See clerkship data for Cabranes: http://www.lawclerkaddict.com/...

4 · Reply · Share ›

blowback · 3 years ago

One would think that having been both a practicing judge and law professor Judge Cabranes would be better informed. The discussion concerning a 2 year law program has long been debated and in fact already exists at Southwestern Law School in CA and another attempt at a two year program was tried at Northwestern which may still be in effect. However, both of these are 3 year programs that become 2 years because students attend school full time in the summer. Judge Cabranes should know that the foundational changes he seeks cannot be made without the approval of the ABA which controls Law School education. CA is one the few states that allows one to sit for the Bar from a non-ABA approved school. Why the ABA continues to have such control over law schools is too long to deal with here but one can do the research.

Rather than offering a well considered critique Judge Cabranes is re-fighting past battles against critical legal studies that took place in the 1990's. If in fact Judge Cabranes had more respect for the legal systems in other nations or was better informed then he might learn something about how to reform the American System. In fact in many nation around the world, Cabranes would not even qualify to become a judge because to do so would require one to earn an real doctoral

see more

CRAIN'S NEW YORK BUSINESS

Article can be found at http://www.crainsnewyork.com/article/20150212/NONPROFITS/150209842/-new-york-law-school-launches-2-year-degree

New York Law School launches 2-year degree

With the launch of its honors program, New York Law students can receive a degree in two years instead of the typical three, and pay two-thirds of the $147,720 they would normally pay for a three-year degree program.

Yoona Ha

Published: February 12, 2015 - 3:00 pm

Aspiring lawyers attending New York Law School can now step up to the bar in record time. With the launch of its honors program, New York Law students can receive a degree in two years instead of the typical three and pay two-thirds of the $147,720 they would normally pay for a three-year degree program.

Since the recession, as jobs in the industry dried up, law school critics have been advocating for shorter degree programs. Even President Barack Obama in August 2013 suggested that law school should be cut to two years.

New York Law School is one of a growing number of schools to answer the call and offer accelerated J.D. programs. Last May, Brooklyn Law School also condensed three years of law school into two.

And some students are finding these programs attractive because when it comes to earning a degree, time is money.

But not all two-year programs are cheaper.

"Many students assume that going to school for two instead of three means that they save a year's worth of tuition, but that's not always the case," said David Lat, managing editor of *Above The Law*, a publication that covers legal issues.

Because many schools charge students by the credits rather than the time spent in school, a two-year degree can easily cost as much as a three-year degree in some cases, according to Mr. Lat.

In fact, at Brooklyn Law the two-year degree isn't cheaper because students still need to pay the same amount for 85 credits to graduate, making the cost of the degree $152,575.

The inaugural class of New York Law School's honors program, however, will pay less, with a $50,000 scholarship and additional financial aid that applies to their $98,480 two-year bill, according to Dean Anthony Crowell.

"About 166 students applied, and only 23 were admitted," said Mr. Crowell. "Because of the small class size, students are able to enjoy more intimate learning experiences."

On Jan. 5, students started the new two-year program at the New York Law School. The program lasts 24 months and requires students to take courses in the summer because accreditation requirements make it impossible to cut some courses throughout the curriculum.

Because the program comes with a heavy course load, it may not be for everyone, especially students who look forward to working in the summer.

"There's a concern of not gaining enough practical work experience, and knowing more theory than practice does put

students at a disadvantage of getting a job," said Shawn O'Connor, CEO of Stratus Prep, a law school admissions counseling company.

But Mr. Crowell said students will still gain plenty of clinical and practical experience and expects to grow the program to admit 30 students in the coming year.

"We want to bridge practice into hires by offering our honors graduates a paid postgraduate fellowship opportunity that places students to work at law firms, government agencies and other areas that interest them," said Mr. Crowell. "We even have employers telling us that they will value graduates of this rigorous program because of the high work ethic required to complete it."

It's still debatable as to whether employers find accelerated-degree graduates more desirable than other applicants, especially since employment decisions hinge on a variety of factors besides the duration of time in school.

"Two-year programs are definitely here to stay, and as bigger schools join the bandwagon, I think we will have a better sense of how effective they actually are," said Mr. O'Connor.

The New York Times

January 17, 2013

Make Law Schools Earn a Third Year

By DANIEL B. RODRIGUEZ and SAMUEL ESTREICHER

TODAY, leaders of the New York bar, judges and law school faculty members will gather at New York University to discuss a proposed rule change. If adopted by the state's highest court, it could make law school far more accessible to low-income students, help the next generation of law students avoid a heavy burden of debt and lead to improvements in legal education across the United States.

The proposal would amend the rules of the New York State Court of Appeals to allow students to take the state bar exam after two years of law school instead of the three now required. Law schools would no doubt continue to provide a third year of legal instruction — and most should (more on that in a bit) — but students would have the option to forgo that third year, save the high cost of tuition and, ideally, find a job right away that puts their legal training to work.

Like many industries today, the legal profession is in the midst of a period of destabilizing change. Myriad services are now being outsourced (often abroad) to nonlawyers, and the number of positions with large firms is dwindling, making it harder for graduating students — many of whom are saddled with six-figure student-loan debts — to find work at the outset of their careers that can even begin to pay off their obligations.

Such prospects are discouraging many young people from pursuing law degrees, and pushing away lower-income students the most.

Part of the problem is that tuition and fees (which topped $40,000 a year, on average, at private schools in 2012) have been soaring, and law schools must do a better job of containing these costs. We also need more financial aid for students. But a straightforward solution — one that would shave the current law school bill by a third for those who take this option — is simply to permit law students to sit for the bar exam and begin practicing even if they have not received a law school degree.

While this wouldn't increase the number of available jobs, a two-year option would allow many newly minted lawyers to pursue careers in the public interest or to work at sm[illegible] serve lower- or average-income Americans, thereby fulfilling a largely unmet [illegible] many young lawyers say they would love to follow this path but cannot afford their onerous debts.

The rationale for reforming the three-year rule, however, is not merely financial. As legal scholars, jurists and experienced attorneys have attested for decades, many law students can, with the appropriate course work, learn in the first two years of law school what they need to get started in their legal careers.

In the 1970s, when similar proposals were discussed, two distinguished panels of experts — one led by Paul D. Carrington, then a University of Michigan law professor, and the other, the Carnegie Commission on Higher Education, overseen by a Stanford law professor and a dean — issued reports supporting a two-year curriculum, as long as certain essential courses were included.

What, then, of the third year, those famous semesters in which, as the saying goes, law schools "bore you to death" and student attendance drops like a stone? With this reform, law schools would have an obvious financial incentive to design creative curriculums that law students would want to pursue — a third-year program of advanced training that would allow those who wished it to become more effective litigators, specialize or better prepare for the real-world legal challenges that lie ahead.

We are confident that many law schools will be able to meet that challenge.

In fact, that evolution is already going on, as many schools (including our own) reimagine their third-year curriculums through externships, public service programs and courses that offer in-depth practical training.

If this trend continues — and the two-year option would only encourage it — those who graduate from rigorous three-year programs will not only emerge with sharper legal skills, but also be more essential to employers, raising the rate of job placement out of law school.

But legal education is not, nor ever truly has been, a "one size fits all" system. We have long had varied routes to the profession. Northwestern, for example, offers an accelerated program that lets students pursue a three-year course of study in two years, allowing them to take the bar and enter the job market a year earlier. And a handful of states, including New York, allow individuals to take the bar after working for a law office for a number of years, in lieu of going to law school, though this approach is seldom used.

Some will argue that the two-year option would only create unequal classes of lawyers and glut the marketplace with attorneys who don't have the skills and training that generations of law school graduates before them have had.

We doubt this will occur. And in any case, the risk ought to be balanced with the varied needs

of the American people for legal services. A two-year option, in our view, would provide young lawyers with the training they need to get started, lift a heavy financial burden off the backs of many — and vastly improve third-year curriculums in the process. That would be a big step in the right direction.

Daniel B. Rodriguez is the dean at Northwestern University School of Law. Samuel Estreicher is a professor at New York University Law School and a director of its Opperman Institute of Judicial Administration.

THE ROOSEVELT-CARDOZO WAY: THE CASE FOR BAR ELIGIBILITY AFTER TWO YEARS OF LAW SCHOOL

*Samuel Estreicher**

INTRODUCTION

This paper argues for a revision of the rules of the New York Court of Appeals to allow students to sit for the bar after two years of law school classes whether or not the law school requires three years to obtain a degree. This revision—reflecting what the rule had been when both President Franklin Delano Roosevelt[1] and Associate Justice

* Dwight D. Opperman Professor of Law & Co-Director, Dwight D. Opperman Institute of Judicial Administration, New York University School of Law. The comments of Jose Cabranes, Michael Estreicher, Zachary Fasman, Stephen Gillers, Laurence Gold, Helen Hershkoff, Randy Hertz, Kevin Castel, Randall Milch, Robert Katzmann, and Albert Rosenblatt are gratefully acknowledged. I am especially indebted to Liz Evans, Erinn Martin, and Inez Tierney for help tracking down sources. Any remaining errors are entirely the fault of the author.

1. *See* FRANK FREIDEL, FRANKLIN D. ROOSEVELT: THE APPRENTICESHIP 76 (1952) ("Two years behind was Stanley Reed, whom Roosevelt appointed to the Supreme Court in 1938. Reed, like Roosevelt, did not take his law degree."). FDR passed the New York Bar examination in the spring of his third year and did not finish his law courses. *Id.* FDR's cousin Theodore Roosevelt also left Columbia Law School after his second year. *See* Robert B. Charles, *Legal Education in the Late Nineteenth Cen-*

Benjamin Cardozo[2] attended Columbia Law School—would cut the costs of legal education for students who pursue this option by a third. This rule change would address in part the concern that the burden of law school debt drives young lawyers to bypass lower-paying public service opportunities in favor of private legal employment. Moreover, such a move would increase the pressure on law schools to deliver educational services to third-year students that enhance their ability to make an immediate contribution as practicing lawyers upon graduation. This is a matter of considerable importance at a time when many law schools place fewer than half of their graduates in full-time positions requiring legal training.

I.
Evolution of the Three-Year Law Study Requirement

Until the American Bar Association (ABA) (formed in 1878) and local bar associations began pressing states to require law school instruction as a prerequisite to admission to the bar, Americans became lawyers—as did Abraham Lincoln—by engaging in a period of legal study, or "reading the law," under the supervision of an experienced attorney.[3] The practice continued into the twentieth century. For a more recent prominent example, Supreme Court Justice Robert H. Jackson—who served as FDR's Attorney General and Chief Prosecutor at the Nuremberg trials—spent only one year at Albany Law School after an apprenticeship before being admitted to the New York Bar in 1913.[4] Only California allows students to sit for the bar without any law school study;[5] others, like New York, require one year of law school to supplement a law office internship.[6] Even in these jurisdictions—in part because of the difficulty in securing an apprenticeship

tury, Through the Eyes of Theodore Roosevelt, 37 Am. J. Legal Hist. 233, 244 (1993).

2. *See* Andrew L. Kaufman, Cardozo 49 (1998). Even though Columbia had moved in 1890 to a three-year course of study for a degree, Cardozo, along with over two-thirds of his class, left school to take the bar. *Id.* ("Leaving without a degree was not a disaster because the degree was not a requirement for admission to the bar.").

3. *See* Mark E. Steiner, *Abraham Lincoln and the Rule of Law Books*, 93 Marq. L. Rev. 1283, 1295–96 (2010).

4. *See* Victoria A. Graffeo, *Robert H. Jackson: His Years as a Public Servant "Learned in the Law"*, 68 Alb. L. Rev. 539, 540 (2005).

5. *See* Cal. Bus. & Prof. Code § 6060(e)(2)(B) (West 2012).

6. New York currently permits candidates to sit for the bar without a degree after one year of study at an approved law school (twenty-eight credit hours) plus three years of an internship at a law office working under the supervision of an attorney. N.Y. Comp. Codes R. & Regs. tit. 22, § 520.4 (2012). Data are not systemically kept but it appears very few lawyers are admitted to practice under this alternative.

with an experienced lawyer willing to train the novice for the requisite period, as well as the improving quality of law schools—three years of law school at an ABA-approved institution has become the practically exclusive path for admission to the legal profession.

It may be instructive to chart the evolution of the New York rule on eligibility to take the bar examination. Initially, New York required a demanding law office clerkship for eligibility, but by the latter part of the nineteenth century had moved progressively toward allowing law school study to substitute for an increasingly greater part of the clerkship requirement.[7] In 1871, bar eligibility required three years of clerkship but law school study could substitute for one of those years. Four years later, college graduates who studied jurisprudence and legal history needed only to clerk for one year and study in law school for one year. By 1877, the rule for *all* college graduates became one year of law office work and one year of law school. Alongside these rules, until 1882 New York also recognized a "diploma privilege" for graduates of the law schools of Albany, Columbia College, Hamilton College, and New York University; these graduates needed to complete only two years of law school and could avoid taking the bar examination altogether.[8]

From 1882 until 1911—the period during which FDR and Benjamin Cardozo sat for the New York bar—college graduates needed to complete only two years of law school to sit for the New York bar examination; non-graduates had to complete three years of law school. Some schools like Columbia began requiring a third year of study to receive a law degree,[9] but the third year was not required by the state.

In 1911, the New York Court of Appeals changed the rules of admission to require, in the case of college graduates, three years of law school study but no law office internship.[10]

---

7. For a listing of changes in law study requirements for the New York Bar, see *infra* Appendix A.

8. This history is usefully recounted in JULIUS GOEBEL, JR., FOUNDATION FOR RESEARCH IN LEGAL HISTORY, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 104–08 (1955), and ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 26–28 (1983). Harvard Law School was not included among the recipients of New York's diploma privilege. *See* STEVENS, *supra*, at 26.

9. *See* KAUFMAN, *supra* note 2. Harvard was the first law school to require three years in 1879. *See* HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 79 (1972).

10. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELLORS-AT-LAW Rule III (effective July 1, 1911), *in* FRANKLIN M. DANAHER, BAR EXAMINATIONS (NEW YORK) AND COURSES OF LAW STUDY 436, 437–38 (5th ed. 1911). In the case of non-graduates of a college or university, the rules required four years of legal study and at least one year in a clerkship. *Id.*

This author could find no official statement of the reasons for the 1911 change. A member of the State Board of Law Examiners and compiler of the rules noted in his private capacity that "[t]he changes in the rules are for the betterment of conditions at the Bar and are intended to raise the standards of intelligence and morals thereat so as to enable it to retain its historic status as the first of the learned professions."[11] The move to a three-year course of study requirement may also have been a reflection of the fact that every law school in New York by then required three years of study for a diploma,[12] and the Association of American Law Schools (AALS) required all member schools throughout the United States to adopt a three-year curriculum by 1905.[13] Writing in 1901, former Cornell Law School Dean Francis Finch also offered a partially pedagogic justification for insisting on three years of law school:

> A course of study of two years can cover only the technical subjects of study . . . . Much has to be omitted which is very useful and beneficial, to allow what is imperatively needed. . . . And the things omitted under the compulsion of the narrowing time are precisely those which ought to be added to turn out something more than a cheap lawyer.[14]

The current rule tracks fairly closely the 1911 version. Under Rule 520.3 of the Rules for Admission of Attorneys and Counselors at Law, an applicant seeking eligibility to sit for the examination based on study of the law in law school must show he or she has graduated from "an approved law school," defined as a U.S.-based school requiring eighty-three credit hours for degree, no more than thirty of which may be granted for law school clinical courses, field placements, and

---

11. DANAHER, *supra* note 10, at v.

12. *See* Francis M. Finch, President's Address Before the New York State Bar Association: Legal Education 6 (Jan. 15, 1901) (transcript on file with author).

13. Harry First, *Competition in the Legal Education Industry (I)*, 53 N.Y.U. L. REV. 311, 336 (1978). Indeed, the Association decided in 1907 that the three-year course of study had to be taken in three years, not two. *See id.* at 337. Essentially, two-year law schools were denied membership. *See* STEVENS, *supra* note 8, at 97. Professor First notes, "The AALS's original decision to require three years, rather than the then prevailing two years, was rooted in financial considerations: only by compelling students to purchase three years of legal education could the elite-model law school meet its revenue constraints." Harry First, *Competition in the Legal Education Industry (II): An Antitrust Analysis*, 54 N.Y.U. L. REV. 1049, 1077 (1979). Further pressure to adopt a three-year curriculum came from the 1921 report of the American Bar Association's Section on Legal Education and Admissions authored by Elihu Root, a former Secretary of State and president of the American Bar Association. *See* PACKER & EHRLICH, *supra* note 9, at 27.

14. Finch, *supra* note 12, at 8.

externships.[15] By contrast, the law office clerkship alternative requires completion of the first year of full-time study at an approved law school and three years of law office study.[16]

II.
Challenges to the Three-Year Law School Requirement in the Early 1970s

The required third year of law school, often the subject of lament,[17] was subject to a series of substantial challenges in the early 1970s when several prominent legal educators urged law schools to adopt a two-year professional degree program:

- President Derek C. Bok, Harvard University: "[W]e could probably graduate students after two years if the bar associations were willing to join in accepting a two-year degree for students who can pass the bar exam."[18]
- Professor Robert A. Gorman, University of Pennsylvania School of Law: "I believe we can turn out lawyers with two years of professional training substantially as well qualified as they are now after three."[19]
- President Edward H. Levi, University of Chicago: "We ought to try to have a period where there will be a suspension of the cartelized rules of association and accreditation, so that we can see the benefits which might come from a variety of different forms. The two-year law school at the professional level, as an alternative, is surely a possibility."[20]
- Dean Bayless A. Manning, Stanford Law School: "[T]he usual period of a student's study in the academic environment

15. *See* N.Y. Comp. Codes R. & Regs. tit. 22, § 520.3 (2012). Sixty-four of the eighty-three credit hours must be earned by attendance in regularly scheduled classroom courses at the law school, including at least two credit hours in professional responsibility coursework. *Id.*

16. N.Y. Comp. Codes R. & Regs. tit. 22, § 520.4 (2012). Study in a law office may be offset by additional law school study at a rate of two weeks per credit hour. *Id.* Completion of a second year of twenty-eight credit hours of law school study would therefore require just under two years of apprenticeship for an applicant to be eligible for bar admission.

17. For an especially informative study, see Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. Legal Educ. 235 (2001).

18. Derek C. Bok, *A Different Way of Looking at the World*, 20 Harv. L. Sch. Bull., Mar.–Apr. 1969, at 2, 5.

19. Robert A. Gorman, *Proposals for Reform of Legal Education*, 119 U. Pa. L. Rev. 845, 849 (1971).

20. Edward H. Levi, *The Place of Professional Education in the Life of the University*, 32 Ohio St. L.J. 229, 238 (1971).

of a university law school should be reduced to two years, with those graduates who wish to become legal practitioners then devoting a third year to practical training and specialty training in the lawyer schools administered by the bar."[21]

- Professor Charles J. Myers, Stanford Law School; Chair, AALS Curriculum Committee: "'There should be substantial variations in the course of study and the requirements for graduation, depending on the career aims of the student. A student who wants to enter the general practice as soon as possible, should be permitted to graduate after two years of study.'"[22]

Two widely circulated reports during this period supported the option of a two-year standard curriculum for law schools—a 1971 report authored by Michigan Law Professor Paul D. Carrington[23] and a 1972 report for the Carnegie Commission on Higher Education authored by Stanford Law Professor Herbert L. Packer and Stanford Law School Dean Thomas Ehrlich.[24]

This nascent movement came to an abrupt end on February 4, 1972, however, when a proposal to revise the ABA standards for accreditation to "permit a full-time student to qualify for the first professional law degree" after sixty hours of instruction over two years "met a nearly unanimous chorus of opposition, including representatives from some of the most prestigious schools."[25] Despite support from Chief Justice Warren E. Burger[26] and ABA president Justin Stanley[27]

---

21. Bayless Manning, *Law Schools and Lawyer Schools—Two-Tier Legal Education*, 26 J. LEGAL EDUC. 379, 382 (1973–1974).

22. Christopher T. Cunniffe, *The Case of the Alternative Third-Year Program*, 61 ALB. L. REV. 85, 90 (1997–1998) (quoting Charles J. Meyers, *Report of Charles J. Meyers*, 1968 ASS'N AM. L. SCH. PROC. pt. I, § 2, at 11). Although Meyers was then serving as the Chairman of the Committee on Curriculum, his report was published separately, and the committee declined to file an "agreed report." *Id.* at 90 n.26.

23. *See* Preble Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37, 39 (1972–1973) (citing Report, *Training for the Public Professions of the Law: 1971*, 1971 ASS'N AM. L. SCH. PROC. pt. I, § 2). Stolz was a member of the drafting committee tasked with updating the ABA's accreditation standards. Cunniffe, *supra* note 22, at 92.

24. *See* PACKER & EHRLICH, *supra* note 9.

25. Reasons given for defeating the proposal are discussed in Stolz, *supra* note 23, at 40. In Professor Stolz's view, the proposal "was killed for very bad reasons that have more to do with institutional tranquility than the public welfare." *Id.*

26. *See* Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232 (1973).

27. *See* Justin Stanley, *Two Years +: The Third Year of Schooling Should Cater to the Special Demands of State Law*, 3 LEARNING & L., Winter 1977, at 18, 20–21, *cited in* Cunniffe, *supra* note 22, at 94 n.57.

for a mix of two years of law school followed by a year or more of law office practical training, the two-year law school proposal was not renewed,[28] although it did spur experiments in clinical legal education.

III.
Recent Calls for Change

In recent years, there has been some renewed interest in reducing the law school curriculum to two years. Judge Richard A. Posner suggested a two-year law school in a 1999 book.[29] Both the ABA and AALS now permit the content of a standard three-year course of study to be squeezed into two years.[30] One prominent law school, Northwestern, provides an "Accelerated J.D." program whereby students complete eighty-six credit semester hours over two calendar years.[31] The Northwestern experiment—which had thirty-two admittees in 2012—does not reduce the cost of legal education, but it does permit students to start practicing law, earning money, and paying their debt sooner.

In addition, and very much to the point, addressing the AALS annual luncheon on January 6, 2012, U.S. Court of Appeals Judge Jose A. Cabranes offered a three-pronged recommendation for reform of legal education:

> [1.] Lawyers planning to practice anywhere near the courts need a solid command, first and foremost, of their own law—of Civil and Criminal Procedure, Statutory Interpretation, Jurisdiction, Administrative Law, Property, Evidence, and Business Associations. While it is possible for lawyers to learn these subjects later in their careers, they start off at a distinct disadvantage if they leave law school without some exposure to them.
>
> [2.] Beyond a renewed emphasis on black-letter courses, my second suggestion is that law schools should consider offering an optional two-year curriculum—consisting primarily of the foundational topics I have just named—followed by a one-year apprenticeship in law practice . . . .
>
> [3.] Firms could hire apprentices at lower salaries than first-year associates, train them in practice, and bill them out at rates clients would be willing to pay. Enhanced, invigorated clinical programs

28. *See* Cunniffe, *supra* note 22, at 93–94.

29. *See* Richard A. Posner, The Problematics of Moral and Legal Theory 280–95 (1999).

30. ABA Standards & Rules of Procedure for Approval of Law Schs. Standard 304(c) (2012–2013).

31. *See Accelerated JD*, Northwestern Law, http://www.law.northwestern.edu/academics/ajd/ (last visited Oct. 19, 2012).

> could be staffed by full-time apprentices (living on a modest stipend), rather than by distracted first and second-year students struggling to balance their coursework with their clinical obligations. . . . Successfully completing an apprenticeship and passing the bar exam would qualify an individual as a lawyer.[32]

IV.
THE PROPOSAL

Following the points laid out by Judge Cabranes, I propose that the New York Court of Appeals amend Rule 520.3 of its Rules for Admission of Attorneys and Counselors at Law to allow a student to sit for the bar examination after successful completion of sixty credit hours, all of which must be earned by attendance in regularly scheduled classroom courses at a law school; no apprenticeship would be required.[33]

My proposal resembles Judge Cabranes's but focuses on changing the New York high court's requirements for eligibility for the bar examination rather than on changing the law schools' curriculum or degree requirements.[34] Given the experience of the early 1970s and

---

32. The Honorable Jose A. Cabranes, U.S. Court of Appeals for the Second Circuit, Remarks at the Annual Luncheon of the Association of American Law Schools: Legal Education Today and Tomorrow 7–9 (Jan. 6, 2012) (transcript on file with author).

33. As under the current rule, at least two of the credit hours would be devoted to professional responsibility coursework. How many of the sixty credit hours could be satisfied through clinical courses would depend on the resulting makeup of the two-year curriculum. If we use the same ratio as under the current rule, students would be permitted to take no more than twenty-one of the required sixty hours in clinical courses. This may make sense, but that would depend on further consideration of which nonclinical courses would be required courses under a two-year regime.

I do not propose here a standard curriculum for students seeking to sit for the bar after two years of law school. In consultation with the law schools, the New York Court of Appeals could require that students taking this option take certain courses—such as property, contracts, torts, legal writing and research, corporations, individual taxation, trusts and estates, evidence, criminal law, secured transactions, debtor-creditor remedies, and real estate transactions. This would still leave space for over twenty credits for trial practice or clinical offerings.

Furthermore, New York will be requiring applicants for the bar to complete fifty hours of pro bono service in order to be eligible for admission. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2012). Such a requirement would certainly apply to applicants taking advantage of the two-year option proposed here. In addition, employers of law students taking the two-year option might consider providing pro bono service opportunities as a means of enhancing the skills base of these novice lawyers.

34. Widener University School of Law Professor Ben Barros would allow students to take the bar examination after two years but defer admission to practice for an additional year. Ben Barros, *Barros Guest Post: Allow Students to Take Bar Exam After Two Years*, THE FACULTY LOUNGE (June 25, 2012), http://www.thefacultylounge.org/2012/06/barros-guest-post-allow-students-to-take-bar-exam-after-two-years.html.

the difficulty any existing law school will have convincing its tenured faculty to change curriculum and basic orientation, the best lever for change is the *legal* requirement that keeps the present three-year law study regime in place. Once that constraint is removed, a marketplace would likely emerge in which law schools would offer different approaches based on their position and the needs of their students. If a law school's students were increasingly able to take advantage of the two-year option, one would expect the school to be more open than perhaps it had been in the past to designing a third-year curriculum that provides an educational benefit that aspiring lawyers of substance could not afford to pass up.

The second respect in which this proposal differs from Judge Cabranes's proposal is that I would not require a year of apprenticeship after two years of law school. This is, ultimately, a practical question. Given the experience of New York and other states that offer law office clerkship as an alternative to law school study,[35] is it likely that law firms or other legal employers generally will hire and train students after two years of law school or that most law schools will have the wherewithal to fund a third year? I am skeptical this will occur.

The principal justification for the proposal is that it will reduce the cost of legal education by a third for students able to pass the bar examination after two years of law school.[36] Admittedly, students receiving scholarships face lower costs; such students are likely to continue on the three-year path to a degree. Loan repayment assistance programs (LRAPs) also mitigate the costs for eligible participants. For most students, however, the third year of law school will cost a full year of tuition plus room, board, and books.

The cost of a third year is a large consideration since private law school tuition in New York nears $50,000 a year, not counting room,

35. *See, e.g.*, Rene Ciria-Cruz, *The Path Rarely Taken: Through California's Law Office Study Program, Veteran Practitioners Help Aspiring Lawyers Join the Bar*, CAL. LAW., June 2011, at 18, 20 (noting that only thirty-nine law readers took the California bar examination from 1996 to 2011 as compared to 39,313 examinees from California- and ABA-approved law schools).

36. It has been suggested that law schools will simply raise their tuition levels to make up for the lost revenue from students leaving after two years to sit for the bar. It may be that some schools will be able to secure some additional revenue from charging the same tuition for sixty credit hours without a degree that they charge for eighty-three credit hours with a degree. I doubt that there are many schools with that degree of market power—especially if we are in a world where the third year of law school is no longer required for bar eligibility.

board, and books.[37] The problem is exacerbated by the worsening employment prospects of many graduates of New York law schools. Recent ABA data for New York-area law schools, set forth in Appendix B, show that of seventeen schools, only four placed sixty percent or more of their 2011 first-year graduates in full-time positions—i.e., not expressly for a term of one year or less—requiring legal training (which includes solo practice and employment in firms with ten or fewer employed lawyers); only three exceeded seventy percent.[38]

From another vantage point, there is more to take into account than merely private gain for those students able to pass the bar examination after two years of law school. As reflected in the LRAP programs themselves, there is also a social benefit in lightening up a financial burden from students who go into public interest or small firm work that serves the needs of the relatively disadvantaged, lower-income, or even average-income Americans.

All other things being equal, a third year of education is nearly always beneficial. But all things are not equal. What is lost by allowing students to sit for the bar after only two years of law school? The available data suggest that student attendance in and preparation for third-year classes drops precipitously as compared to prior years of study.[39] Given present trends toward emphasizing legal theory and multidisciplinary offerings, and the limited capacity of clinical courses (other than at a few richly endowed schools) to serve more than a small fraction of the graduating class, it may be questioned whether much will be lost in terms of the lawyering skills of students able to pass the bar examination after two years of law school.[40]

---

37. The savings may be even greater if the novice lawyer is able to obtain paid legal employment during his third year, even if we assume he or she will command a lower salary than a law school graduate who has passed the bar.

38. *See infra* Appendix B. The table was obtained from Professor William D. Henderson, who directs the Center on the Global Legal Profession at Indiana University Maurer School of Law, and it is drawn from ABA data for 2011 graduates. *See generally* Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1 (including summary of data). We do not know whether 2011 is representative of the past; this was the first year that U.S. law schools were required to report the extent to which first-year graduates obtained employment requiring legal training. *See id.*

39. *See, e.g.*, Gulati, Sander & Sockloskie, *supra* note 17.

40. It would be independently desirable to enhance the capacity of the bar examination to test for practical lawyering skills. *See generally* Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002); *see also* Comm. on Legal Educ. & Admission to the Bar, Ass'n of the Bar of the City of N.Y., *Report on Admission to the Bar in New York in the Twenty First Century—A Blueprint for Reform*, 47 REC. ASS'N B. CITY N.Y. 464, 511 (1992); N.Y. STATE BAR ASS'N, REPORT OF THE TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION 7 (2011) (outlining licensing reform recommendations for the State Bar examiners to adopt), *available at* http://www.nysba.org/AM/Template.cfm?Section=

Some may contend that students who are deprived of the third year of law school will be less able to function as "universal generalists,"[41] or as the point was made at the turn of the last century, less able to function as "*men* as well as lawyers, vitalized by the air of historic jurisprudence, fascinated by the absorbing interest of the study, strengthened and lifted by its world-old lessons."[42] The humanizing effect of liberal arts education may be a sound reason for insisting on a college (vs. graduate) education as a prerequisite for law study—as is now universally the rule—but it does not appear to provide strong support for the state requiring a third year of law school study.

Some may also say that the world in 2012 is a much more complicated place than the world in 1911. Indeed it is. But even today not all students will become lawyers handling global business transactions or opening up new communications pathways for an increasingly interconnected planet. Those that do are likely to be trained by their law firms. For the overwhelming majority of students entering the law, their careers as litigators or advisers with respect to transactions will involve the kinds of skills—careful text-reading, good argument-making, securing testimony from reluctant witnesses—and knowledge base—the laws of taxation, trusts and estates, property transfer, family law, and so on—that a well-designed two-year law school curriculum can impart.

If a significant number of students take advantage of the two-year option, law schools will sustain financial losses that they cannot easily recoup because faculty and buildings represent relatively fixed costs; hence preserving the status quo may serve what Berkeley Law Professor Preble Stolz called the interest in "institutional tranquility."[43] It is unclear, however, whether this interest should carry much weight when attempting to justify a legal mandate of an additional year of law school. It is also unclear what impact the proposal would have on most law schools in New York. Some schools will adapt by increasing the number of transfer students or foreign law students. Some schools may consolidate with others as a means of reducing costs. Others hopefully will adapt by shaping an educational program that makes

---

Task_Force_on_the_Future_of_the_Legal_Profession_Home&Template=/CM/ContentDisplay.cfm&ContentID=48108.

41. *See* Stolz, *supra* note 23, at 45 (citing Letter from Abraham Goldstein, Dean, Yale Law Sch., to The Council of Legal Education, Am. Bar Ass'n).

42. Finch, *supra* note 12, at 15.

43. Stolz, *supra* note 23, at 40.

sense for the third-year student.[44] Law schools would be well advised to shape a third-year program that meets the practical needs of students who are likely to practice on their own or in small firms.[45]

Another argument likely to be raised is that the proposal moves in the wrong direction—that at a time when New York has too many law graduates chasing after too few jobs, the proposal will increase the number of young lawyers seeking work.[46] This may be grounds for skepticism about approving another law school in the New York area, allowing lawyers from foreign countries or foreign law schools to sit for the bar, or easing the difficulty of passing the bar examination itself. It does not appear to be a compelling justification for maintaining particular educational requirements for taking the bar exam. Requiring three years of law study for eligibility to sit for the bar merely delays the entrance of lawyers into the market (at a fairly hefty price); it does nothing to address the mismatch of graduates and available jobs. Put differently, the better tack is to limit the supply of lawyers directly and openly, if that is the desired outcome, not indirectly through educational requirements.

CONCLUSION

It is hoped that the New York Court of Appeals will be open to considering a change in Rule 520.3 of its Rules of Admission of Attorneys and Counselors at Law to permit students who have completed two years of study (sixty credit hours) at an accredited law school to sit for the bar examination. If they pass the examination and other requirements for admission, they may, as did President Franklin Delano Roosevelt and Justice Cardozo, practice law without a law degree.

---

44. Some schools may also adapt by better separating their professional training function (for which the two-year curriculum would apply) from their role as producers of legal scholarship and future law teachers (for which further study leading to a Master's or Ph.D. might be required).

45. Zev Eigen and I are working on a proposal for a third year of skills training based on the "emergency room model" of medical school. In addition to skills instruction, the proposal envisions teaching best practices in how to handle a high volume of matters in a cost-efficient, professionally responsible manner. *See* Zev Eigen & Samuel Estreicher, *Enhancing the Effectiveness of Law School Clinical Programs in Providing Representation for Working Americans*, *in* ACCESS TO CIVIL JUSTICE FOR AMERICANS OF AVERAGE MEANS (Samuel Estreicher & Joy Radice eds.) (forthcoming 2013).

46. This was a concern raised by Columbia Law Dean Michael I. Sovern with respect to the 1972 proposal to allow two-year law school programs. *See* Stolz, *supra* note 23, at 43–44 & n.22. In contrast, some have argued that increasing the number of lawyers is a good thing because it will decrease the cost of legal services. *See* John McGinnis & Russell D. Mangas, *First Thing We Do, Let's Kill All the Law Schools*, WALL ST. J., Jan. 17, 2012, at A15.

This change will reduce the cost of legal education for many and enable them to pursue lower-paying careers in the public service, if they are so inclined or situated. It will also encourage law schools to design a third-year curriculum attuned to the needs of their third-year students.

APPENDIX A: CHANGES IN NON-LL.M. U.S. LAW STUDY REQUIREMENTS FOR ADMISSION TO THE NEW YORK BAR

1830	Seven years of clerkship in the law office of a practicing lawyer; or four years (or shorter period after age fourteen) of classical study, and three years of clerkship.[47]
1855	"Diploma privilege" for Hamilton College law students, granting admission to the bar upon certification of a faculty committee.[48]
1859	Diploma privilege for students completing at least three terms of twelve weeks each at the University of Albany's law school.[49]
1860	Diploma privilege for students of the New York University School of Law completing at least three terms of twelve weeks each (or two terms of twelve weeks each with "one year's study of the law elsewhere.")[50]
	Diploma privilege extended to graduates of Columbia College law school; requiring attendance for a term of at least eighteen months.[51]
1871	Three years of clerkship in a law office, or two years of clerkship plus one year of law school.[52]
1875	For college graduates who studied jurisprudence and legal history, one year of law school plus one year of clerkship in a law office.[53]
1875	Justices of the Supreme Court of New York adopt a resolution urging abolition of the diploma privilege.[54]
1877	For all college graduates, one year of law school plus one year of clerkship in a law office.[55]
1882	New York Court of Appeals abolishes the diploma privilege by court rule.[56]

47. DAVID GRAHAM, TREATISE ON THE PRACTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK 11 (1st ed. 1832) (discussing Revised Statutes that went into effect in 1830).

48. ASS'N OF THE BAR OF THE CITY OF N.Y., REPORT OF THE COMMITEE ON ADMISSION TO THE BAR 6 (1876) (discussing "Laws 1855, chap. 310").

49. *Id.* (discussing "Laws 1859, chap. 267").

50. *Id.* (discussing "Laws 1860, chap. 187").

51. *Id.* (discussing "Laws 1860, chap. 202").

52. *Id.* (discussing rules of the Court of Appeals of New York).

53. JULIUS GOEBEL, JR., FOUND. FOR RESEARCH IN LEGAL HISTORY, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 104 (1955).

54. *Id.* at 105.

55. *Id.* at 104.

56. *Id.* at 107; ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 27 (1983).

1882–1911 For all college graduates, two years of law school to sit for the bar; three years if not college graduates.[57]

1911–1927 For college graduates, three years of law school or clerkship in a law office, or any combination thereof; four years of law study, at least one of which must be in clerkship in a law office, if not a college graduate.[58]

1918–1927 Examination dispensed with for graduates of registered law schools with a three-year course of study who could not sit for the bar because of military service.[59]

---

57. *E.g.*, RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective Jan. 1, 1896); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective Apr. 1, 1899); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (1901); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective July 1, 1907); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective June 1, 1908); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (as amended Jan. 1, 1910).

58. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective July 1, 1911), *in* FRANKLIN M. DANAHER, BAR EXAMINATIONS (NEW YORK) AND COURSES OF LAW STUDY 436, 437–438 (5th ed. 1911); *see also* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Dec. 1, 1912); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Jan. 1, 1914); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Feb. 15, 1915); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective May 3, 1916); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1917); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1918); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Jan. 15, 1919); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1927).

59. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1918); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (effective Jan. 15, 1919); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1927).

1920–1927	Military service could be counted as part of the required one-year clerkship for non-college graduates; clerkship requirement did not apply to applicants who completed two years of college and four years of law school.[60]
1929	Degree from approved three-year law school or four years of law study, which could be pursued as a clerk in a law office; any successfully completed year of law school could be counted towards the law study requirement; after bar examination, six months of clerkship for all applicants; six additional months of clerkship for non-college graduates, for which a fourth year of law school could substitute; two years of college or equivalent required before law study.[61]
1933–1938	Degree from approved three-year law school or proof of four years of law study, which could be pursued as a clerkship in a law office; for non-graduates of approved college or university, mandatory one year of clerkship in a law office or fourth year of attendance in law school; two years of college required before law study.[62]
1939	Elimination of mandatory one-year clerkship for non-graduates of college or university.[63]
1945–1953	Examination dispensed with for graduates of approved law schools whose law school study was interrupted by active military service of at least a year, or whose military service prevented sitting for the bar.[64]

60. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1927).

61. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1929).

62. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1933). In 1934, the Court of Appeals amended Rule IV to permit four years of law school classes beginning at 4 p.m. to satisfy the four-year course of study requirement. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules IV–V (1933); *see also* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1935); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–IV (1937); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1938).

63. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule V (as amended Nov. 16, 1939).

64. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1945); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1950); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1953).

1955–1972	Three years of college or equivalent plus degree from approved three-year law school or four years of clerkship in a law office, for which certain periods of completed law school study could be substituted.[65]
1972	Same, except that the instructional requirement for law school study was defined at eighty semester hours of credit in professional law subjects, no more than ten hours of which in "other courses related to legal training" taught by law school or other university faculty, and no more than twelve of which in "clinical and like programs."[66]
1974–1988	Same, except that eligibility for the law office alternative required at least one year of attendance as a matriculated student at an approved law school plus three years of clerkship in a law office; with additional periods of law school counting towards the clerkship requirement.[67]
1988–2011	Same, except that sixty of the eighty semester hour minimum had to be in "professional law subjects;" clinical and like courses could count for no more than twenty of the required eighty hours.[68]
2012	Same, except minimum instruction requirement is raised to eighty-three credit hours, a minimum of sixty-four of which have to be in "regularly scheduled classroom courses at the law school" and two credit hours have to be in courses in professional responsibility; a maximum of thirty hours in clinical courses may be credited towards both credit hour requirements;

65. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1955); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1956); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1961); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1963); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW §§ 522–524 (1970).

66. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW §§ 520.3–520.5 (as amended Sept. 1, 1972).

67. *See* N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.5 (1975); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.5 (1977); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1980); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1983).

68. *See* N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (effective Oct. 26, 1988); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1993); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1997); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1999); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (2000); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (2001).

> field placements or externships may be credited towards the overall eighty-three credit hour requirement but not the sixty-four classroom hour requirement; a maximum of twelve hours in joint degree or other courses taught outside the law school may be counted towards the eighty-three hour requirement but not the sixty-four classroom hour requirement; up to twelve credit hours for distance education courses may be counted towards both requirements under certain conditions.[69]

69. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.3 (effective Apr. 1, 2012).

APPENDIX B: EMPLOYMENT OUTCOMES FOR 2011 GRADUATES

School		USN Rank	Percent FTLT Bar Passage Required*	% Employed Non-Professional	% Unemployed All	% Unknown	% Solo Practitioners	% Funded	Total Number of Graduates	%2-10 FTLT	%2-10 All
Touro College (Fuchsberg)	NY	4th Tier	59.3%	0.5%	19.9%	2.7%	1.8%	0.5%	221	25.8%	31.2%
St. John's University	NY	79	47.8%	1.4%	10.9%	1.4%	1.1%	0.4%	276	10.1%	15.2%
New York University	NY	6	90.1%	0%	3%	0.4%	1.1%	12.2%	466	2.4%	2.6%
Yeshiva University (Cardozo)	NY	56	51.8%	1.8%	17.1%	1.6%	1.1%	8.9%	380	6.6%	12.9%
Hofstra University (Deane)	NY	89	40.7%	4%	13.1%	6.4%	1%	3%	297	14.5%	22.9%
City University of New York	NY	113	36.9%	1.8%	21.6%	3.6%	0.9%	12.6%	111	12.6%	16.2%
Pace University	NY	142	36%	5.4%	13.1%	5%	0.5%	7.7%	222	12.6%	15.3%
New York Law School	NY	135	35.5%	3.9%	16.7%	4.5%	0.4%	6%	515	13.0%	18.3%
Brooklyn Law School	NY	65	47.3%	0%	30.1%	2%	0%	2.6%	455	10.1%	12.3%
Columbia University	NY	4	94.1%	0%	0.7%	0.7%	0%	8.3%	456	1.3%	1.8%
Cornell University	NY	14	76.1%	0%	5.5%	2.5%	0%	12.9%	201	3%	3%
Fordham University	NY	29	57.5%	0%	12.9%	1.6%	0%	13.3%	428	6.1%	7.5%
State University of New York at Buffalo	NY	82	51.8%	3.3%	11.8%	8.6%	3.3%	0%	245	18.87%	22%
Rutgers University	NY	82	56.5%	0.8%	9.7%	4%	2.8%	1.2%	248	6%	6%
Seton Hall University	NY	69	62.8%	0.3%	8.5%	5.1%	1.4%	0.3%	293	9.6%	11.6%
Albany Law School	NY	113	50%	2.5%	16.1%	1.7%	1.3%	0.8%	236	21.6%	28.8%
Syracuse Univeristy	NY	96	50.3%	4.7%	12.4%	3.6%	0.5%	0%	193	14.5%	17.1%

Source: This table was obtained from Professor William D. Henderson, Director, Center on the Global Legal Profession, Indiana University Maurer School of Law, and is drawn from ABA data for 2011 graduates.[70]

Definitions: *Full-Time-Long-Term.

70. For a summary of the ABA data, see Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1.

University of New Hampshire

Media Relations

FEBRUARY 5, 2015

First Ever Evaluation of UNH Law's Daniel Webster Scholars Program Proves Its Graduates Are "Ahead of the Curve"

DENVER, CO – In recent years, legal employers and members of the profession have called on law schools to educate lawyers who are better prepared to practice law and the University of New Hampshire School of Law listened. Now, the school educates law students who are outperforming their colleagues in the field who have been licensed to practice law for up to two years, according to a study conducted by the *Educating Tomorrow's Lawyers Initiative* of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver.

"The legal profession is consistent in its call for new lawyers who can hit the ground running," said Alli Gerkman, director of Educating Tomorrow's Lawyers and co-author of the report. "Our findings show that this program delivers that. And we believe that the program's success is replicable at other law schools on both grand and small scales."

The Daniel Webster Scholar Honors Program (DWS) at UNH Law is a two-year program that immerses law students in experience-based learning settings complemented by ongoing assessment and feedback. The program culminates in a review of each student by a New Hampshire bar examiner that replaces the two-day bar examination.

"We know this program makes a difference," said Jordan Budd, interim dean of UNH Law. "These students receive two years of intensive, hands-on training that prepares them to practice law effectively from day one, and we know it because they are securing great jobs."

"I am excited to see the program's success recognized by an independent organization," added John Garvey, founding director of the program. "The school's innovative tradition combined with the full cooperation and assistance of the New Hampshire bench and bar has made it possible."

"Along with the opportunity to get hands-on experience practicing law, the DWS program taught us to be good listeners and to value self-reflection," says James O'Shaughnessy, who graduated from the program in 2010. "The program taught me to always ask: am I doing the best job that I can for my client? Even beyond the practice skills, this type of thinking has become a habit and has made me a better lawyer."

The findings of the *Educating Tomorrow's Lawyers* study are published in *Ahead of the Curve: Turning Law Students into Lawyers*. The report proposes recommendations for law schools that want to replicate the success of the University of New Hampshire's program,

including integration of formative, ongoing assessment in a practice-based context and building strong collaborations among the bench, the bar, and the school.

"Collaboration was key. This is a state that has fully embraced the idea that legal educators and the legal profession must work together toward meaningful improvements in legal education," Gerkman said. "We hope this report sparks interest in further collaboration between these groups to ensure a system of legal education that trains new lawyers to the highest standards of competence, professionalism, and readiness for practice."

The report can be found here: http://educatingtomorrowslawyers.du.edu/images/wygwam/pdf_resources/Ahead_of_the_Curve_Turning_Law_Students_into_Lawyers.pdf

-30-

Media Contact: Erika Mantz | 603-862-1567 | UNH Media Relations | @unhnews

Secondary Contact: Robert Thompson | 303-871-6602 | IAALS

HOW DID LAWYERS BECOME "DOCTORS"?

FROM THE LL.B. TO THE J.D.

By David Perry

American law schools award a basic degree called the J.D. or juris doctor, giving each graduate the Latin title of "doctor of law," although, occasionally, "J.D." is thought to stand for "doctor of jurisprudence." As "doctors," attorneys are in prestigious company – along with many medical practitioners and those academics who have been through around five years of graduate school and have written a doctoral dissertation. An attorney's work is not medical, and it is rarely academic; but each of this year's 44,000 grads is a doctor – and after attending just three years of law school and writing a law review "note"-style paper.

LEGUM BACCALAUREUS

Lawyers weren't always "doctors," and skeptical law school faculties and administrations took 70 years to adopt the J.D. as the first degree in law. It is only since 1971 (since 1969 in New York) that every ABA-accredited American law school has awarded all its graduates the J.D. Until then, most law graduates received a degree called the LL.B. This *legum baccalaureus* or "bachelor of laws" was originally an undergraduate degree – appropriate because an aspirant did not need to have a college degree to matriculate in law school.

The LL.B., first awarded in 1840 at the University of Virginia,[1] had two predecessors: The first law degree in the United States had been instituted in 1792 at the College of William and Mary and had been called the "Batchelor [sic]

of Law"; Virginia had, since 1829, been awarding each new lawyer a "Graduate of Law" degree.[2] Virginia's switch to the LL.B. was inspired by the undergraduate LL.B. offered at the University of Cambridge in England. By 1849 the LL.B. was adopted by Harvard's law school.[3] Its adoption soon spread to other law schools in the northeast and then to the rest of the country.

The LL.B. was intended as a bachelor's and not a graduate degree, as the law degree is today. Law schools did not require college degrees because they had to compete with much cheaper law office study. In fact, almost no jurisdictions required a college degree (or in the 19th century, a law degree either) for bar admission.[4] It was not until the 1930s that many law schools required two or three years of college and even then took in high school graduates. Despite the lax requirements, though, after 1900 the more prestigious law schools admitted mostly college graduates.[5] Students at these law schools were accumulating bachelor's degrees – the B.A. or B.S. – *and* the LL.B. At the same time, their peers in the arts and sciences and in medicine received *graduate* degrees (the Ph.D. and M.D.) instead of a second bachelor's. To erase this inequity, in 1900 Harvard students suggested that their school award the J.D. and in 1902 petitioned their faculty to do so.[6] The Harvard students based the term J.D. on "J.U.D." or *juris utriusque doctor*, granted by universities in the German-speaking countries,[7] meaning the recipient was "doctor of both of the laws" – that is, canon and civil.

JURIS UTRIUSQUE DOCTOR?

The Harvard Law School faculty requested that the Harvard Corporation, the governing body of the university, make the change to awarding the J.D.[8] The Corporation never did, but the idea was picked up by the new law school established in 1902 at the University of Chicago. For University of Chicago president William Rainey Harper, the J.D. was part of "establish[ing] its law school upon the foundation of academic work."[9] The J.D. had to be a graduate degree, too, because only college graduates were to be admitted to the Chicago law school.[10]

However, the curriculum itself, which yielded but an LL.B. back at Harvard, did not change to reflect this new graduate degree status.[11] (The Harvard Corporation might have been troubled by this failure to change the requirements when it turned down the J.D.-seekers.) Because the curriculum stayed the same, when Chicago eventually agreed to admit law students who had not graduated college, the law school had to retain the LL.B. Thus, students with no B.A. or B.S. would get an LL.B. for the same course of study as J.D. recipients pursued.

After Chicago's adoption of the J.D., other prominent law schools followed. New York University offered the J.D. in 1903; Berkeley and Stanford did so in 1905; and Michigan in 1909.[12] As at Chicago, all these schools offered both the J.D. and the LL.B., and J.D. recipients were distinguished from LL.B. recipients by having college degrees. Newer and less prominent law schools joined in: by the 1925-1926 academic year, 80% of law schools were using the same two-degree structure.[13] Faculties and administrations, and sometimes state governmental bodies, were in control of adopting the J.D. The ABA Committee on Legal Education, an early supporter of the J.D., had no authority to dictate the degrees (or the curriculum) schools gave their students.[14]

Despite these moves, the three most elite eastern schools – Harvard, Columbia, and Yale – never offered the *juris doctor* as a first law degree.[15] While many schools began calling their three-year law degree the J.D., these eastern leaders focused on expanding programs for a fourth year of law school[16] – typically intended for law teachers. Today, similar courses of study lead to the LL.M., but Harvard and Yale underscored their rejection of the LL.B.-to-J.D. switch by naming this fourth-year degree the J.D. (*not* the LL.M.) and keeping the LL.B. as the first law degree.[17] At the same time, many other J.D.-granting schools adopted the LL.M. for fourth-year programs, or kept it, as they had offered LL.M.s in the 19th century. This is the root of the unusual bachelor's-to-doctorate-to-master's program available at law schools. Yet here, the trend of awarding J.D. degrees comes to a halt.

JURIS DOCTOR – MORTIS?

Harvard's refusal to adopt the J.D. spelled the end of the first era of the J.D. Why?

Robert Stevens, in *Law School: Legal Education in America from the 1850s to the 1980s*, shows that Harvard was the trendsetter for American law schools. When Harvard began to require a three-year course of law study at the end of the 19th century, three years became standard in law schools. When Harvard restricted admission to students with college degrees in 1909, many accredited law schools did the same, and by the early 1970s, all accredited law schools had implemented this standard. When Harvard's dean, Christopher Columbus Langdell (serving 1870-1895), famously instituted the case method – training students to deduce legal rules from cases in casebooks – to replace the

old method of simply lecturing on black-letter law, the case method rapidly overtook the lecture method and, by the 1920s, became the *only* way to teach law. So when Harvard stayed silent on the matter of adopting the J.D. as a first law degree, Harvard was heard and followed.

The rejection of the J.D at Harvard (and Yale and Columbia, too) stemmed and then reversed the tide of the J.D. degree. Stanford eliminated the J.D. for those admitted after 1927; Boalt Hall at Berkeley did so in 1930; NYU in 1934. By the late 1930s, the New York State Board of Regents found the J.D. to be inappropriate as a first graduate degree in New York law schools.[18] From the 1920s through the 1950s, many Midwestern and western schools, Michigan and Ohio State among them,[19] made the J.D. an honors degree, given to LL.B. candidates for good grades or superior writing ability. This led to an anomaly: a few schools in the Midwest occasionally gave the honors J.D. to students who had not graduated college, contrary to the usual, post-graduate significance of the J.D.[20] The state of Illinois was an exception. Most Illinois law schools awarded the J.D. to all college-graduate students. The University of Chicago had never abandoned the standard, three-year J.D., and Chicago's neighbors accepted its influence.[21] Elsewhere, however, by 1962, the J.D. was moribund.

JURIS DOCTOR – VIVO

Yet today, the J.D. degree is the universal first law degree. When the J.D. was reintroduced in 1962, there was not decades-long equivocation: universal acceptance of the J.D. and elimination of the LL.B. came in less than 10 years. Why?

In 1963 and 1964, committees of the Association of American Law Schools (AALS) and the ABA's Section of Legal Education recommended its use[22] – apparently at the suggestion of John G. Hervey, dean of the Oklahoma City University School of Law.[23] The trend started among the smaller schools, mostly midwestern and western schools that were not nationally prominent. This time the more conservative faculties of Harvard, Yale and Columbia could not buck the resolve of the smaller schools. Note that, again, while the ABA and the AALS backed the change, neither issued a directive requiring it, and in any event schools did not need their permission to do so. By 1968, the clamor of students and alumni even at prestigious LL.B. holdouts became too great for faculties and administrations to ignore.

The administrations of the smaller or less-prestigious schools brought up arguments put forth in 1902 by Harvard's and Chicago's J.D.-proponents that the LL.B., as a bachelor's degree, did not recognize the post-graduate nature of legal study. By the 1960s, most law students were college graduates, and by the end of that decade, almost all were required to be.[24] Dean Hervey and other law teachers called the *juris doctor* a "professional doctorate," but (as in 1902) they planned no actual change in the basic legal curriculum to match the new degree.

JURIS DOCTOR

Proponents of the J.D. were far more focused on the professional advantages a professional doctorate could confer. At the first schools reintroducing the J.D., faculty and some students expressed concern about preferential hiring of J.D.s over LL.B.s. Evidence was adduced that, when some government agencies determined an employee's pay grade, the employee received more credit for a "doctorate" J.D. than a "bachelor's" LL.B. Many alumni reported problems, too, in their hiring or promotion at universities: LL.B.-holders were not considered to have the doctoral degree that universities prized in their instructors.[25] Aspirants' concern was increased by how *unaccredited* law schools, still common in California and a few other states, tended to admit students without college degrees and to give only LL.B.s.[26]

The *image* of lawyers was a less commonly stated reason, but just as strong. Being a "doctor" looks better than being a college graduate to clients and the public. The enthusiasm of alumni for making the change spotlights this. At the same time that law schools began awarding their current students the J.D., they gave their alumni the opportunity to exchange their LL.B. degrees for J.D. degrees.[27] A small fee was usually required; many schools treated it as a way to stay in touch with and gratify their alumni. And what an alumni-relations opportunity it was! Valparaiso University awarded 400 J.D.s to its LL.B. alumni in a Law Day ceremony in May 1970, a few years after current students began receiving them.[28] "Almost half" of the living alumni of the Vanderbilt Law School (including some who had graduated in 1912) came back to campus for the 1969 "J.D. Investiture" ceremony.[29] One-third of living Columbia alumni took part in a poll on whether this *nunc pro tunc* award of the J.D. to LL.B. holders would be acceptable to them; 80% said yes.[30]

Alumni embraced their new image enhancer. State bar ethics opinions, in New York and elsewhere, from the 1960s and 1970s, refused lawyers the right to say that they hold an LL.B. *and* a J.D. when they had earned only *one* of them.[31] A score of opinions were issued on the right of lawyers to announce themselves as "Doctor" so-and-so.[32] American lawyers may call themselves "doctor" in a university setting or overseas, wherever native lawyers use

the title. A few states, like New York and, recently, Texas, have allowed a practicing attorney to call himself or herself "doctor."[33]

SCEPTICI

Despite the enthusiasm, "reactionary" faculty members insisted that the traditional LL.B. was sufficient. The faculties of prominent eastern schools – Harvard, Yale, and Columbia – as well as Texas and Georgia denied the existence of prejudice in government or academic hiring. While Oklahoma City's Dean Hervey may have thought that "receipt of a second bachelor's degree by law school graduates tends to impair the image of the legal profession,"[34] those from prestigious or established schools faced fewer image problems, and the reactionaries attacked the innovation as a mere grab for credentials. The dean of the Buffalo Law School in New York (which has its roots in the 19th century) accused Dean Hervey of hunting only for prestige: "[C]ertain small law schools, with a wide proliferation of evening schools heading the group, have decided to by-pass [sic] a period of normal school development and attempt to attain for themselves and their graduates a form of professional recognition which could not properly be theirs for many years."[35] Columbia faculty insisted any given degree was prestigious because of the *awarding institution*, not because of the name of the degree itself.[36] And Columbia's dean suggested that if Harvard, Yale and Columbia awarded only the LL.B., the LL.B. would be the degree regarded as prestigious.[37]

RESISTANCE IS FUTILIS

Conservatives resisted until student pressure became too insistent.[38] Student newspapers and spokesmen from one school would monitor each new adoption of the J.D. by another school and use it to pressure unwilling faculty and administrators. Columbia Law School is a powerful example: At Columbia, student demands for the J.D. began in earnest in 1966[39] and became more insistent leading up to Columbia's student protests of 1968.[40] Both faculty and students explicitly associated the faculty's refusal to adopt the J.D. as yet another instance of the faculty's refusal to adapt the curriculum, class schedules and attitudes to students' desires.[41] The dean's stuffy refusal to progress to the J.D. seemed similar to the dean's insensitivity to student resistance to the Vietnam War.[42] Some students were even concerned (although the rules were changed as early as 1962) that LL.B. candidates, as bachelor's students, were more liable to be drafted into the military than if they were termed graduate students.[43] After 1968, faculties and administrations relented.

With the last few holdouts, including Yale, moving to the J.D. in 1971, every law student in America would leave school as a "doctor of law." The curriculum and the level of deliverable work required had not changed appreciably since 1900, but the profession now had the trappings of a "professional doctorate" instead of the naïf's bachelor's. Even now, law degrees are continuing to develop. In the past decade, most Canadian law schools have switched from the LL.B. to the J.D. (again, without any concomitant change in requirements). The Canadians seem to be seeking prestige and to be keeping up with their neighbor lawyers in the United States. And then, there's the rush among law schools to offer LL.M.s and similar fourth-year degrees – maybe being even a "doctor" is not enough. Resumes require yet another degree, and more tuition and other costs to students, to look as "professional" and employable as possible.

ENDNOTES

1 *See* Alfred Zantzinger Reed, Training for the Public Profession of the Law 166 n.2 (1921); John Ritchie, The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826-1926 21-22 (1978).

2 Ritchie, *supra* note 1 at 15.

3 Twenty-Fourth Annual Report of the President of Harvard College to the Overseers, Exhibiting the State of the Institution for the Academical Year 1848-49 13 (1850).

4 Robert Stevens, Law School: Legal Education in America From the 1850s to the 1980s 99 (1983).

5 *Id.* at 37 nn.22,23.

6 *The Law School Degree*, Harvard Crimson (Apr. 26, 1902), *available at* http://www.thecrimson.com.

7 James Parker Hall, *American Law School Degrees,* 6 Mich. L. Rev. 112, 113 (1907).

8 *Id.* at 114.

9 Frank L. Ellsworth, Law on the Midway: The Founding of the University of Chicago Law School 120 (1997) (citing William Rainey Harper, 7 The University Record 199 (1902-03)).

10 *Id.*, p. 120.

11 *See, e.g.,* Ernst Freund, *The Correlation of Work for Higher Degrees in Graduate Schools and Law Schools*, 11 Ill. L. Rev. 301, 301-02 (1916).

12 New York University, "Special Announcement for 1903" 3 (appended to New York University Law School Announcements for 1903-1904); Sandra P. Epstein, Law at Berkeley: The History of Boalt Hall 38 (1997); Marion Kirkwood & William B. Owens, A Brief History of the Stanford Law School, 1893-1946 18 (1961), *available at* http://www.law.stanford.edu/school/history/historysls.pdf; *Notes and Personal*, 2 Am. L. Sch. Rev. 291, 300-301 (1909).

13 Alfred Zantzinger Reed, Present Day Law Schools in the United States and Canada 78 (1928).

14 *See Report of the Committee on Legal Education and Admissions to the Bar*, 29 Ann. Rep. Am. Bar Ass'n 487, 496 (1906).

15 *Special Committee on Advanced Academic and Professional Degrees,* 1937 Proceedings of the American Association of Law Schools 292, 298.

16 Reed, *supra* note 13, at 80 n.1.

17 *See* Harvard Crimson, Apr. 14, 1910; W. Lee Hargrave, LSU Law: The Louisiana Law School from 1906 to 1977 47 (2004) (citing many professors who took the fourth-year J.D. program). Boalt Hall at Berkeley did the same in the late 1920s, making the LL.B. a three-year degree and awarding the J.D. for a fourth year. Epstein, *supra* note 12, at 125.

18 Kirkwood, History of the Stanford Law School at 43; Epstein, *supra* note 12, at 125; New York University, New York University Bulletin, School of Law Announcements for the Session 1934-35 17 (1934); Miguel de Capriles, *The Escalating Battle of the Degrees,* Trial, June/July 1967 at 54.

19 *E.g.* Jay W. Stein, *The Juris Doctor*, 15 J. Legal Educ. 315, 318 (1963) (the law schools of the Ohio State University, the University of Oregon, the University of North Dakota, and Wayne State University); William Wleklinski, A Centennial History of the John Marshall Law School (1998) at 27; Reed, *supra* note 13, at 80 n.10.

20 *See 1936 Report (With Corrections) of the Committee on Advanced Academic and Professional Degrees*, 1937 Proceedings of the American Association of Law Schools 306, 307; Reed, *supra* note 13, at 80 n.1.

21 See the report Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education, and the reports for subsequent years for adoptions of the J.D. by all American law schools.

22 *Report of the Special Committee on Graduate Instruction,* 1963 Proceedings of the American Association of Law Schools 154, 171; John G. Hervey, *Law School Graduates Should Receive Professional Doctorates: Time for a Change from LL.B. to J.D. Degree*, Student Law (June 1965) at 6; Stevens, *supra* note 4, at 247 n.6.

23 *See Report of the Special Committee on Graduate Instruction, supra* note 22, 154, 168-69.

24 Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education and succeeding annual editions; Stevens, *supra* note 4, at 46 n.22, 193.

25 *E.g.,* Daniel Gutman, *The Escalating Battle of the Degrees,* Trial June/June 1967 at 55; *A Matter of Degree,* Time, Dec. 30, 1966 at 42; Hervey, *supra* note 22, at 5.

26 Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education and succeeding annual editions.

27 For a summary of 10 years of this enthusiasm, see Tamar Lewin, *The Great Degree Sale,* Nat'l L.J., May 5, 1980 at 14 ("No one has exact figures, but registrars at law schools estimate that perhaps 100,000 LL.B. holders have taken up the offer" for the change to the J.D.).

28 Michael I. Swygert, "And, We Must Make Them Noble": A Contextual History of the Valparaiso University School of Law, 1879 -2004 259 (2004).

29 Don Welch, The Vanderbilt Law School: Aspirations and Realities 14 (2008).

30 *The J.D. Degree at Columbia*, Law Alumni Bulletin [Columbia], Winter 1969, at 6-8.

31 NYSBA Committee on Professional Ethics, Op. 488 (July 17, 1978); Olavi Maru, Digest of Bar Association Ethics Opinions (1970 & Supps. 1970, 1975 and 1980) §§ 6548 (Fla. 1968), 7279 (Tex. 1970).

32 *E.g.,* Maru, Ethics Opinions, §§ 8503 (Kentucky, 1971); 10787 (Fla. 1974); 12256 (Ore. 1975) (all yes); 7169 (Ohio, 1967); 7962 Col. 1974); 8366 (Ill. 1975) (all no).

33 NYSBA Committee on Professional Ethics, Op. 105(a) (1969); New York City Bar Op. 876 (1971); Kathleen Maher, *Lawyers Are Doctors, Too*, ABA Journal.com, Nov. 24, 2006, *available at* http://www.abajournal.com/magazine/article/lawyers_are_doctors_too/; *contra* A.B.A. Formal Op. 321 (1969) (refusing a lawyer the right to use the title "doctor").

34 John G. Hervey, *Evaluate J.D. Degree on Merit*, Trial, June/July 1967, 56.

35 George P. Smith, *J.D. Only Instant Status Symbol*, Trial, Aug./Sept. 1967 at 18.

36 *Faculty Split Over Student Degree Vote*, Colum. L. Sch. News, Nov. 20, 1967 at 1.

37 *Profs. Lusky, Farer Disagree on JD-LL.B. [sic] Controversy*, Colum. L. Sch. News, Nov. 20, 1967 at 5.

38 David N. Hollander, *Law Faculty Approves Awarding J.D. Degree in Place of the LL.B.*, Harvard Crimson, Mar. 12, 1969.

39 *E.g., Around the Circuits*, Colum. L. Sch. News, Oct. 18, 1965 at 5; *Around the Circuits*, Colum. L. Sch. News, Oct. 18, 1965, at 5; Columbia University Faculty of Law Meeting Minutes, Dec. 15, 1967 at 3,423.

40 *See* Steve Schwarz, *Students to Vote Thursday on J.D.-LL.B. Controversy,* Colum. L. Sch. News Oct. 30, 1967 at 1; *Overwhelming Student Vote Supports Change From LL.B.*, Colum. L. Sch. News Nov. 20, 1967 at 1; *Profs. Lucky-Farer Disagree on JD-LL.B. [sic] Controversy, supra* note 37, at 5; *Faculty Rejects J.D. Degree[,] Remains Indifferent to Issue*, Colum. L. Sch. News Mar. 27, 1968 at 1; *Student Council Unanimous[:] Pursue J.D. Degree Again*, Colum. L. Sch. News Oct. 28, 1968 at 4; and various letters to the editor in Columbia Law School News; Columbia University Faculty Meeting Minutes, Jan. 17, 1969 at 3526-27.

41 Columbia University Faculty of Law Meeting Minutes, Feb. 14, 1969, at 3537-38.

42 *See Students Meet Opposition From Dean on JD [sic] Issue*, Colum. L. Sch. News, Feb. 19, 1968 at. 1.

43 *Draft Board Surprise for LL.B. Seekers,* Colum. L. Sch. News, Mar. 23, 1966 at 6.

Reprinted with permission from: New York State Bar Association Journal*, June 2012, Vol. 84, No. 5, published by the New York State Bar Association, One Elk Street, Albany, New York 12207.*

David Perry (davidperrysaddress@gmail.com) is a freelance tax writer and editor in New York City. He was a tax associate at Caplin & Drysdale, Washington, D.C., after earning his J.D. from Georgetown University Law Center. He earned his undergraduate degree in history from Brown University.

Accelerated Option – Pepperdine University

Pepperdine University School of Law now offers an accelerated, two-year Juris Doctor (JD) degree option that is paired with the opportunity to simultaneously earn a certificate from the number one ranked Straus Institute for Dispute Resolution. This distinctive and innovative approach blends rigorous legal education at a leading institution with significant skills and training geared toward practicing law in the 21st century. The Accelerated Option may be a good choice for motivated students willing to work at a faster pace to finish law school sooner.

Jump Start Your Legal Career

The Accelerated Option provides graduates with the opportunity to enter the workforce a year before the traditional three-year degree program, gaining an early advantage on the path to professional success. After an initial summer session beginning in May, the Accelerated Option students will enroll in the regular first year JD classes and continue to matriculate in the regular JD program. In total, the accelerated students will take classes in four semesters and two summer sessions. Students in the Accelerated Option will have a more fixed schedule, but they will also have the opportunity to select from a broad range of elective courses, clinics, externships, all student-edited journals (including the Pepperdine Law Review), and inter-school moot court and trial competitions.

Benefit from an Economical Approach

The Accelerated Option is a unique offering and is among only a few of its kind in the country. With the rising cost of legal education in mind, the two-year approach enables students to earn income from their careers sooner and may enable students to limit some living expenses. Tuition costs under the Accelerated Option are not necessarily less than under the regular JD, as the overall unit requirements are the same.

Earn a Certificate from the #1 Dispute Resolution Program in the Nation

In the initial summer, the accelerated students will attend classes offered by Pepperdine University School of Law's highly regarded Straus Institute for Dispute Resolution. These classes will meet during the evening and on Saturday. Because accelerated students will have such intensive involvement in the Institute, they will also be able to earn a Certificate in Dispute Resolution.

The Curriculum

- 1st Summer

  May-August

Students enrolled in the Accelerated Option complete courses in Legal History, Negotiation Theory and Practice, Mediation Theory and Practice, Cross Cultural Conflict and Dispute Resolution, and Arbitration Practice. In addition, they may enroll in one of the elective courses offered through the Straus Institute for Dispute Resolution that summer. Additional details will be provided in the spring 2015. These courses all meet on evenings and on Saturday for two weeks each.

- 1st Year

  August-May

  Accelerated students take the same first-year courses as all other law students and are integrated into the first-year class. First-year law students follow a rigorous course of study that covers the following subjects: Civil Procedure, Constitutional Law, Contracts, Criminal Law, Introduction to Ethical Lawyering, Legal Research and Writing, Property, and Torts.

- 2nd Summer

  May-August

  During the summer after their first full year, accelerated students take a full load of summer classes. The exact number will vary, but most students will take approximately 12 units. The only specific course requirement for the second summer is that accelerated students must take 6 units of externship, which will provide a real-world, hands-on experience. Students will also be encouraged during this semester to complete the requirements for the Certificate in Dispute Resolution.

- 2nd Year

  August-May

  After the first year, accelerated students complete core upper-division courses, and they also have the opportunity to select from a broad range of elective courses, clinics, externships, and student-edited journals.

FAQ

Do I need to have completed my bachelor's degree by the time the Accelerated Option (AO) begins?

No, but you must have a completed bachelor's degree by the time the fall semester begins in August. The Accelerated Option's summer courses take place in the evenings and on weekends, allowing students the time needed to complete their bachelor's degrees before the start of the fall term.

If I am not admitted to the Accelerated Option, can I still be considered for admission to the traditional three-year JD program?

Yes, the consideration will be automatic, immediately following the initial decision.

Will the Accelerated Option cost me less in tuition than the traditional JD program?

Not necessarily, as the overall unit requirements are the same, and you will still be completing six terms of law school. The major financial benefits of the AO include earning income sooner and the possibility of limiting living expenses. If students plan carefully, they can arrange a schedule that will

allow them to have a small tuition savings. This savings can be achieved by maximizing the number of units taken under the flat rate during the second year.

Will I be able to participate in the Global Justice Program initiatives?

Yes, you will be able to participate in many of the initiatives but perhaps not all, due to the need to enroll full-time during the second summer.

In addition to the required 6-unit externship during the second summer, will I have the opportunity to extern during the fall and spring terms?

Yes, in addition to the required 6-unit externship during the second summer, additional externship opportunities may be available during the fall or spring in the second year with careful course planning.

If I no longer wish to pursue the Accelerated Option, is it possible to transition to the traditional JD program, and will I be penalized for doing so?

It is possible to transition, and this option provides an important safety net for the AO student.

Free


The 2-Year Law Education Fails to Take Off


Valeant Chief Is Hospitalized With Pneumonia


The Tax Sleuth Who Too Down a Drug Lord

DealB%k WITH FOUNDER ANDREW ROSS SORKIN

The 2-Year Law Education Fails to Take Off

By **ELIZABETH OLSON** DEC. 25, 2015

John A. Prinzivalli found Northwestern University's two-year law program ideal. The program closed this fall. Joshua Lott for The New York Times

Email

Share

A quicker, cheaper law degree — which got a major vote of confidence when President Obama, a lawyer and former

law professor, unexpectedly endorsed it in August 2013 — has been widely promoted as an ideal way to slash growing student debt and give beginning lawyers a leg up in a difficult job market.

But one of the most visible experiments, the two-year law degree, has foundered so far. The only elite school to adopt it, the Northwestern University Pritzker School of Law, this fall ended its accelerated two-year juris doctor program after it failed to attract enough applicants.

“We thought this program was the holy grail alternative to bring in students who might otherwise not have considered law school,” Daniel B. Rodriguez, the Northwestern law school dean. “It was like ‘Field of Dreams,’ ” he said, referring to the Kevin Costner baseball movie. “If you build it, they will come.”

The Northwestern program was a bellwether for innovation in legal education at a time when law school has lost some of its luster and applications have declined — except to top-tier schools — as prospective students see higher tuition costs, but fewer legal job opportunities.

Only two years ago Mr. Rodriguez and Samuel Estreicher, a professor at the New York University School of Law, publicly praised the streamlined degree as “a big step in the right

RELATED COVERAGE

Brooklyn Law School Offers a Safety Net for New Students JULY 12, 2015

Evaluating That Third — Boring — Year
AUG. 1, 2014

DealBook: Obama Says Law School Should Be Two, Not Three, Years
AUG. 23, 2013

direction" to rapidly train lawyers,
ease student financial burdens and encourage innovation in third-year law curriculum.

Despite the closure, a handful of other law schools are still successfully offering a two-year degree option. They include Brooklyn Law School, University of Kansas, University of Dayton School of Law and Southwestern Law School in Los Angeles. But such degrees largely do not reflect retooling of the law school curriculum because accreditation rules require the same number of course credits to graduate. The degree in a truncated time frame typically costs the same as the three-year version.

Even so, a number of law schools — confronting the reality of plunging applicants and perhaps spurred by the president's seal of approval — are trying to push the boundaries of conventional legal education in other ways.

This month, for example, the Loyola University Chicago School of Law said that, starting in fall 2016, it planned to offer a weekend juris doctorate program that would allow part-time students to earn a degree using both physical classes and distance learning. Other law schools also are experimenting with mixing online learning and in-class sessions to attract law degree seekers who want more flexibility.

A speedy degree, however, is not the only issue facing law schools. Employers are demanding that law graduates have the skills to work as lawyers from their first day of employment.

In response, some schools are overhauling their third-year offerings. The University of California Hastings College of the Law began a program called Lawyers for America in 2011 that lops off the last year of academic classes. Instead, students gain hands-on experience by spending their final year in places like a district attorney's office, where they learn tasks like taking depositions and filing legal motions.

Law schools have been cautious about too much tinkering, unwilling to disrupt a proven earnings model and to avoid the wrath of alumni reacting to any diminution of the school's brand.

"We are trying to change a system that's been the same for more than 80 years," said Blake D. Morant, dean of George Washington University Law School and current head of the Association of American Law Schools. "At the same time, employers — law firms, corporate

counsel and federal agencies — are telling us that they no longer want to train these lawyers.

“They want lawyers with the critical-thinking skills they learn in law school, but who also are ready to hit the ground running.”

As the popularity of law school has slumped, the schools are trying to figure out how to assure a steady stream of applicants, and tuition dollars, while juggling entrenched institutional costs like six-figure professor salaries and upscale facilities. Changing the longstanding law school model can be expensive and chancy.

Northwestern, for example, did the market research and tailored its program to appeal to slightly older students with workplace experience, but its pipeline of students was unexpectedly narrowed by economic and regulatory forces, said Mr. Rodriguez, Northwestern’s dean. The program, which started in 2010, “began before the world changed and there was a free-fall in applications.”

The law school has labored to reach its goal of 30 students per class each year, a typical number for many such two-year programs. Students with solid job experience like John A. Prinzivalli, 29, of Chicago, found the program ideal.

“It was a good step for me after spending five years in an economic consulting firm,” said Mr. Prinzivalli, who is set to graduate in May 2016 from the two-year program. “I wanted to be with like-minded peers yet be able to quickly rejoin the work force.”

He has a job offer from a major law firm, where he interned last summer, so he is saving a year’s living expenses and also gaining a year’s salary with an earlier job start date. The accelerated program “is a chance to show ambition and hard work,” he said, but “it’s also a lot of work in a compressed time frame.”

Another stumbling block for law school experimentation can be American Bar Association accreditation rules. As a university-affiliated law school, Northwestern was allowed to recruit a percentage of high-achieving undergraduates, who might have otherwise gone to another law school, to go directly to its law school, using results from tests like Graduate Record Exam (GRE) rather than the more traditional Law School Admissions Test (LSAT).

Increasingly, higher education institutions are opting out of relying on

standardized testing in evaluating applicants, but most of the A.B.A.'s 200-plus accredited law schools use the test as a significant marker for admission decisions.

The rule change was criticized by some stand-alone law schools as a shortcut that helped university-affiliated law schools corral good students. About two dozen independent schools pressed the accrediting body, the A.B.A. Section on Legal Education, to rescind the new rule. Last summer, citing too many law school requests for variances to its rule, the A.B.A. reversed itself effective in 2017, so that currently enrolled students can complete their degrees.

Even with the overturned rule, Barry Currier, the A.B.A. section's managing director for accreditation and legal education, said law schools could continue to recruit high-performing undergraduates who have completed three-fourths of their education to participate in "3 + 3" accelerated programs. The six-year program allows qualified rising seniors to enter law school and complete both a bachelor's and law degree in less time than the typical seven years.

Such streamlined programs have been more popular with the legal academy. So far about 30 schools, including Northwestern, Fordham University School of Law and Drexel University Thomas R. Kline School of Law, have adopted such programs.

Schools committed to the two-year law degree, like Brooklyn Law School, say there is an extra layer of scrutiny for those applying to the program, which allows students to complete their studies in 24 months. Students must undergo a formal interview, either in person or via Skype, to "make sure that students understand it is a vigorous program," said Nicholas W. Allard, the school's dean.

For some, the briefer, cheaper degree is invaluable. For example, Frank P. Michielli, 24, of Westchester, N.Y., who worked at a legal recruiting firm before entering Brooklyn Law School's two-year program, works part-time and lives in law school housing to avoid too much education debt.

"I saved a year of living expenses, which can really add to your debt," he noted. "So while others will be paying a third year of tuition, I'll be getting a paycheck."

Among schools committed to a third year, the University of California Hastings School of the Law has a Lawyers for America program that

provides students with the option of spending their final year getting hands-on skills. Students also commit for a year following their graduation to work in the same place, for an annual stipend of $35,000, according to Marsha N. Cohen, a law professor and founding executive director of the program.

“I really wanted a tactile learning experience,” said Ali Nicolette, 28, of Huntington Beach, Calif., a third-year student who works for Disability Rights California, a statewide agency, where she interviews new clients, conducts negotiations and drafts pleadings.

“Having the practical skills will be a huge advantage if I have to go up against graduates with perfect law school records,” she said.

However, she said, there is a downside. “The salary is subsistence pay, especially in this area,” she noted, “but the experience is an investment, too.”

A version of this article appears in print on December 26, 2015, on page B1 of the New York edition with the headline: The 2-Year Law Degree Fails to Take Off.

Tab C

Forms, Self-Help Centers

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

Chambers of
THE CHIEF JUSTICE

December 28, 2015

Hon. Wallace B. Jefferson, Chair
Commission to Enlarge Civil Legal Services
Alexander Dubose Jefferson & Townsend
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562

Re: State Law Library

Dear Wallace:

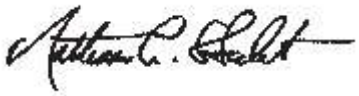
Several days ago, I was given a tour of the State Law Library's website by the Library's director, Dale Propp, assistant director Leslie Prather-Forbis, and research librarian, Robbi Horvath. The Library's website is a most remarkable resource, perhaps unique in the country.

I frequently use the Library's historical Texas statutes collection and HeinOnline, a clearinghouse for law reviews and many other materials, but I have those sites bookmarked and hardly ever go to the home page, http://www.sll.texas.gov/. It is a veritable treasure trove for lawyers, especially lawyers representing clients *pro bono* or for reduced fees, and also provides help for unrepresented litigants or just people with legal questions.

The Library staff offered me a personal tour because they are anxious – driven, really – to be of greater service to Texas lawyers and the public. Their efforts to expand the Library's resources and extend its outreach are cutting-edge. They are especially interested in contributing to the work of the Commission to Expand Civil Legal Services and the Texas Access to Justice Commission. They have made efforts to publicize their assets to the Bar and others, but they have asked for help to do more.

In today's world, an entire library can be as close as your personal computer. I believe the State Law Library can be of great service to the Commissions, as well as to the State Bar of Texas and the people of Texas.

Sincerely,



Nathan L. Hecht
Chief Justice

c: Hon. Phil Johnson, Supreme Court of Texas
Hon. Debra Lehrmann, Supreme Court of Texas
Hon. David Newell, Court of Criminal Appeals of Texas
Nina Hess-Hsu, General Counsel, Supreme Court of Texas
Martha Newton, Rules Attorney, Supreme Court of Texas
Osler McCarthy, Public Information Attorney, Supreme Court of Texas
Michelle Hunter, Executive Director, State Bar of Texas
Trish McAlister, Executive Director, Texas Access to Justice Commission
Betty Balli Torres, Executive Director, Texas Access to Justice Foundation
Dale Propp, Director, State Law Library
Leslie Prather-Forbis, Assistant Director, State Law Library
Robbi Horvath, Research Librarian, State Law Library

November 30, 2015

Lonnie A. Powers Become a fan
Executive Director, Massachusetts Legal Assistance Corporation

Closing the 'Justice Gap'

Posted: 07/11/2014 7:05 pm EDT | Updated: 09/10/2014 5:59 am EDT

Demand for civil legal aid continues to outstrip supply. Among attorneys and others in the field, this is known as the "justice gap."

It's clear that we will never close this gap unless our federal and state funders dramatically increase their support. In the meantime, we must also find ways to expand access to information that can help those in need. While there is no one way to do this, self-help legal centers and smarter use of technology are surely part of the solution.

In 1996 the Legal Services Corporation, an independent entity created by Congress in 1974 to support civil legal aid organizations around the country, issued a report touting the benefits of technology to increase the capacity of civil legal aid organizations. With its enthusiastic descriptions of self-help kiosks ("The Minnesota Twins sell tickets via kiosks which allow the potential buyer to 'see' what seats are available on a given date, and what the view is like from those seats, reportedly prompting many ticket upgrades"), the 18-year-old report is quite dated. But its basic message still holds true today: By using technology and self-help centers, the civil legal aid profession can "reshape delivery of legal services" and "assist millions of additional clients at very low cost."

Today, self-help centers and technology have radically reshaped the delivery of civil legal aid. There are now online sources of legal assistance in each of the 50 states that provide information on civil legal cases related to basic human needs. In Alaska, that state's court system has set up an online Family Law Self-Help Center with videos and articles providing information about child support and custody, divorce, and domestic violence. The Texas Legal Services Center runs TexasLawHelp.org, which provides free online information related to housing and employment discrimination, domestic violence, and other critically important civil legal matters.

In some instances, such as Massachusetts' MassLegalServices.org, these online self-help centers assist civil legal aid advocates and attorneys in "more easily, accurately, and efficiently [creating] legal documents for their clients," as Vincent Morris, director of the pioneering Arkansas Legal Services Partnership, wrote last year for the *Mississippi Law Journal*. (For a comprehensive overview of this aspect of the legal landscape, Morris' "Navigating Justice: Self-Help Resources, Access to Justice, and Whose Job Is It Anyway?" is a must-read, and it argues convincingly for the inclusion and expansion of "innovative self-help resources" to "ensure that unrepresented civil litigants have meaningful access to justice.")

A number of states, including Illinois, Iowa, Minnesota, New York, and others, have combined the self-help aspect of online research with live help in the form of instant messaging from legal experts, who are known as "navigators." (This model has been employed by the healthcare industry in the form of "patient navigators" -- people who are not healthcare providers but are nonetheless familiar with the healthcare system and assist new patients in navigating among specialists and primary care providers.)

Yet another method of expanding access to civil legal aid information is through self-help centers located in courthouses and staffed by attorneys. A district judge had nothing but praise for the Civil Law-Self-Help Center set up on the bottom floor of the Las Vegas Justice Court: When litigants are better prepared, "the judge can make intelligent decisions," District Judge Elizabeth Gonzalez told the *Las Vegas Sun*. "The traffic through the center is much better than I anticipated, and I'm impressed with how the staff has handled it."

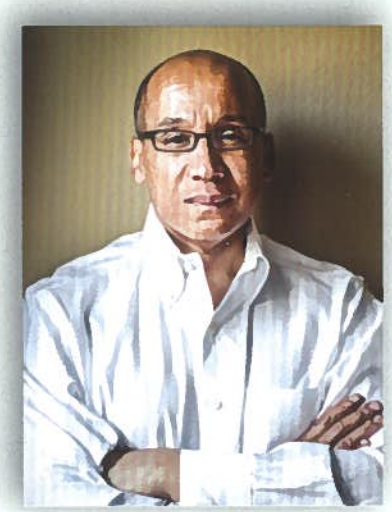
In Massachusetts, "Lawyer of the Day" programs in housing courts around the state provide advice and assistance -- but not representation -- to income-eligible tenants and landlords. Courts in Massachusetts are also in the process of opening two pilot self-help centers, one in the western part of the state in Greenfield, and a second in Boston.

Nothing can replace the value brought by a skilled attorney or advocate to civil legal issues affecting basic human needs such as housing, shelter, and family safety. But expanding access to information through the use of technology and self-help centers to meet rising demand must be a part of the solution to closing the justice gap.

President's Spotlight

Judge Eric Shepperd, County Court of Law #2

"I Hope That Inspiration Leads to Aspiration"



Over the coming months, this column will spotlight people and organizations in Austin who are working to bring legal services to those in our community who need them most. I hope you will be inspired by these stories as we take a look at some of the heroes in Austin's legal community. And I hope that inspiration will lead to aspiration. We should all aspire to be the kind of lawyer that Barbara Jordan described when she said,

Lawyers are people who help you to navigate life. Lawyers have the kind of breadth of experience and training which helps you to avoid pitfall, avoid problems — to reach solutions, and attain the kind of equanimity, the kind of equality, the kind of commonality and caring that exists between individuals.

Helping the citizens of Travis County navigate life is exactly what Lisa Rush, Manager of the Travis County Law Library and Self-Help Center, does every single day.

Travis County Law Library and Self-Help Center

Across the street from the Heman Marion Sweatt Courthouse in the Ned Granger Building is the Travis County Law Library and Self-Help Center, managed for the past 15 years by Lisa Rush. With the quiet strength of a ninja librarian, Rush makes sure every person who walks into the library needing help is greeted by a friendly face belonging to someone on her small but knowledgeable staff. Rush and her staff are eager to help provide resources to the thousands of Travis County residents who have visited through the years, answering questions, referring services, assisting with paperwork, and providing help for pro se litigants and others needing help with civil court matters.

Lisa Rush, Manager of the Travis County Law Library and Self-Help Center

The library staff consists of six reference and technical support librarians and two reference attorneys. This mix of staff and continuum of services allows patrons to take advantage of both the self-help and library services offered. The head of reference has a law degree. When someone first comes to the library and stops at the reference desk, many questions can be answered quickly and efficiently at that point. If the question involves research, the research librarians can assist in pointing the patron to the right forms, books or websites where the information can be found. The majority of the patrons needing help from the reference attorneys are pro se litigants trying to represent themselves in uncontested family law matters. The attorneys also help with occupational driver's licenses, expunctions, and landlord/tenant issues.

According to Rush, if Travis County didn't have the pro se program there would no longer be a need for the Law Library. "You can't justify having a Law Library when your attorney patrons stop coming," says Rush. "Now, about 20% of our patrons are attorneys, but the majority are pro se litigants who are generally trying to represent themselves in the family courts. If the case is uncontested family law, we've got a pretty good system in place to help them. If their case is contested, we don't have anything to help them. We can show them the Family Bar Practice Manual, or we can send them to Legal Aid, but their funding restrictions are very tight. We have a lot of working poor in Austin who are not so poor that they can qualify for attorney help but they still have a need."

The library does provide services for attorneys. It's a quiet place to escape from the courthouse across the street. Copiers and printers are available for use, and small conference rooms are available to attorneys and mediators for $20/hour. The rooms are free for Volunteer Legal Service, Texas Rio Grande Legal Aid, Austin Dispute Resolution Center, and for those who have been ordered by the court to sit down and talk to their

clients. These services are in addition to all of the regular library resources, which include such things as Westlaw and the State Bar collections and publications.

Helping people get occupational driver's licenses has become an overwhelming task for the reference attorneys of late, mostly due to the surcharge program imposed by DPS. If someone misses a payment, their license is automatically suspended again. They may not realize that and then they drive to work, ending up back in the criminal court building. They may get a court-appointed attorney for the criminal case, but if they can get civil help and get the occupational driver's license issues resolved — sometimes just by paying a fine — their criminal court case is often dismissed. Gaining an occupational driver's license can be a transformative event. And the number of people needing assistance in this area greatly exceeds the capacity of the two staff resource attorneys.

According to Rush, she and most of her staff are limited in what they can say to patrons, because offering advice can be considered practicing law. They can point people to forms or show them information in a book or on a website, but many of the library patrons don't have the literacy level needed to interpret the information or to fill out the forms or write an order. They need an attorney. "And I worry about them (the patrons)," says Rush. "Because sitting down and talking with an attorney can be a life-changing opportunity. An attorney can give you guidance, show you a warning, tell you about a pitfall that you can avoid. They can find a route or a solution out of your problem. People don't know what they don't know. Hearing something from an attorney could save them a lot of time. We would love it if every one of our patrons could sit down and talk to an attorney."

In September, the Library partnered with UT School of Law to provide two evening expunction clinics. And beginning in October, they will offer a walk-in clinic five days a week from 10 a.m. to noon where patrons can ask the resource attorneys questions about uncontested family law matters. If more attorneys were available to help, occupational driver's licenses could also be addressed during the clinic hours.

Taking on a client is not the only way an attorney's expertise is needed. Reviewing forms is another. "Right now," Rush said, "The Austin LGBT Bar is helping us review our divorce forms in light of the Obergefell decision. They are going to rewrite them for us. We're very excited!" In addition to reviewing and updating forms, attorneys would be helpful in simply attending clinics and being a scribe. To a patron who is not literate in English or who can't read or write, having a knowledgeable scribe to help fill out the proper forms could be a game-changer.

The Austin Bar Association is currently developing a partnership with the Travis County Law Library to help provide such assistance. Talks are underway about how the Austin Bar can help the Law Library with occupational driver's licenses, forms, clinics, or other legal needs. Watch *Bar Code* or future issues of *Austin Lawyer* for more details in the coming weeks and months. • *AL*

Partnership Provides Accessible Legal Aid

· 0 Comments · Facebook Comments (0) · East Hawaii News, News, North Hawaii News, West Hawaii News

Supreme Court State Law Librarian Jenny R.F.F. Silbiger (left) and Elise von Dohlen, Legal Aid Society of Hawai'i's Director of Grants Management (right) test the new Hawai'i Self-Help Interactive Forms on Legal Aid's LawHelp website. Hawai'i State Judiciary courtesy photo.

Posted on **June 2, 2015**

Share |

by **Big Island Now Staff**

Project partners from the Hawai'i State Judiciary, the Hawai'i State Public Library System, and the Legal Aid Society of Hawai'i joined together Monday to announce the latest developments in the ongoing effort to improve access to the courts for people of all income levels, with special emphasis on Hawai'i's self-represented litigants.

Ten new court forms were made available online, and 10 seminars titled "Know your Rights" were completed state-wide.

"One of the greatest challenges to equal justice today is the lack of effective access to our civil justice system. People who have low or even moderate incomes cannot afford to hire an attorney to represent them in their civil legal cases," Chief Justice Mark E. Recktenwald explained. "As a result, every year in Hawai'i, thousands of people must represent themselves in our civil courts and try to navigate a system that is foreign to the average layperson. Many of them simply give up. For this reason we have continued to pursue projects and programs that make Hawai'i's courts more accessible."

State Librarian Stacey Aldrich said that the resources available to people have been greatly increased.

"Through the Self-Help Interactive Forms Expansion Project, we have increased the resources that enable people to do things for themselves," said Aldrich. "Twenty-three of the most frequently used civil legal forms are now available online, along with state-of-the-art software that takes users through a step-by-step question and answer

process to complete the forms easily and correctly. For those who do not own a personal computer or have Internet access, the Hawaii State Public Library System provides access to the "A2J" self-help forms on 800 library computers and 250 netbooks statewide."

A grant from the State Justice Institute and previous funding given to the Legal Aid from the Legal Services Corporation Technology Initiative Grant helped to fund the Judiciary's Self-Help Interactive Form Expansion project.

Training sessions on the new software have been given to staff members at public libraries and Legal Aid attorneys hosted 10 free "Know Your Rights" briefings across the state. Some of the topics covered at the briefings include landlord-tenant, estate planning, and long-term care.

"We want to thank all the librarians across the state who helped make this partnership a success. From hosting and helping organize the 'Know Your Rights' presentations at their local libraries, to directing library patrons to the legal resources and information available online, this project would not have been possible without their commitment to increasing access to justice in our community," M. Nalani Fujimori Kaina, Executive Director of Legal Aid said. "We also want to thank our partners at the Judiciary who were instrumental in securing the grant from the State Justice Institute to allow us to further develop these forms. These key partnerships have allowed us to help more people gain greater access to our legal system."

The partnerships success will allow for continuous support from Legal Aid in local libraries. Additionally, "Know Your Rights" presentations will be planned at local libraries and efforts will be made with the Judiciary to create more online court forms.

Through the use of technology, individuals who otherwise may not have a choice but to navigate the legal system on their own can now receive help with their legal problems.

"As part of our Access to Justice Initiative, making the courts easier for the public to navigate is a top priority for the Hawai'i State Judiciary," said Chief Justice Recktenwald. "The Self-Help Interactive Forms Expansion Project is a part of that effort. We extend our special thanks to Access to Justice Chairman Daniel R. Foley and Retired Associate Justice Simeon R. Acoba for their continued leadership and support in making the legal system more accessible to the public."

The new "A2J" self-help interactive forms are also available online at Legal Aid's LawHelp website and the Hawai'i State Judiciary's website.

TAGS

Chief Justice Rechtenwald·Hawaii State Judiciary·Interactive Forms.·Know Your Rights·LawHelp·Legal Aid·Self Help Forms·State Librarian Stacey Aldrich

SIMILAR POSTS

- Free Divorce Legal Aid Meeting in Honoka'a
- 'Landlord-Tenant Basics' Kona Presentation

Tab D

Limited Scope Representation

As many as 80% of litigants in family law courts represent themselves. Many would like the assistance of an attorney for parts of their cases even if they cannot afford full representation. The Board of Governors of the State Bar recently adopted recommendations made by the California Commission on Access to Justice aimed at encouraging attorneys to provide limited scope representation of pro per litigants. The Judicial Council also adopted new rules and forms to enable limited scope representation, effective July 1, 2003.

20 things judicial officers can do to encourage attorneys to provide **Limited Scope Representation**

How judges can get more attorneys to draft intelligible declarations and enforceable orders for self-represented litigants.

Limited Scope Representation Committee of the California Commission on Access to Justice

Support the General Idea

1) Make positive comments about limited scope representation and how it's great to have attorneys involved in self-represented cases—you appreciate getting forms you can understand, orders you can enforce, and having attorneys for appearances. Let it be known that you think it is not only okay, but beneficial for attorneys to provide limited scope representation. Let litigants know that they may get limited scope assistance if they are unable to afford (or choose not to have) full representation.

This is a win/win/win (court, litigant and attorney) and it helps everyone if done correctly.

2) Hold a training for other judicial officers on the issue of limited scope representation. Offer similar sessions to the local bar.

Consider an annual training in limited scope representation put on by the local bar in each county so that new forms, procedures and "bugs" can be addressed. This can also serve as a vehicle to address concerns that arise between bench and bar and train new lawyers.

3) Mention 'unbundling' as you also mention pro bono when doing public speaking to lawyers or the public.

4) Encourage the Bar Association to set up a limited representation panel and have at least a listing of persons who will help with preparing and negotiating judgments, especially in low asset cases.

5) Get the local Bar Board of Directors to pass a resolution in favor of Limited Scope of Representation and have it publicized in their newsletter. Having it come from the Bench will add credibility to the resolution. Consider a joint resolution.

6) Educate. Rather than complaining of problems with the narrow scope of the work, make suggestions to help counsel improve the quality of the "package" of services they supply in certain areas.

7) Show that you understand and believe that partial representation is helpful to the court. (Tell the lawyers that the years they spent sweating through law school do make a difference.)

Modify Courtroom Conduct

8) If the client has agreed to limited representation, you've got to let the attorney out once the scope of the representation is completed. If the word gets out that you are not honoring these agreements, attorneys will feel they're being held hostage for their good intentions and attempts to help, and won't want to make limited appearances in the future. That means you won't be able to get attorneys to assist when you need them to.

9) If an attorney is appearing on only one issue in a matter, try to bifurcate that in the hearing so that the attorney isn't either sitting through issues he or she is not authorized to address (and not getting paid for) or being tempted to expand the scope of representation beyond that which the attorney and client have negotiated. If the attorney decides that he or she can't keep quiet on the other issues, consider taking a break in the hearing and giving the attorney the opportunity to revise the scope of the representation with his or her client.

10) Recognize that clients who have consulted with an attorney may not present that attorney's advice fully or even accurately. Trust that it is unlikely that the attorney told them "not to bother with service" or similar misconceptions. If there appear to be consistent problems, consider addressing them as general issues with the local bar.

11) Resist attempts by opposing counsel to broaden the scope of the representation.

12) Be open to discussing with counsel, when necessary, clarification of the issues so that opposing counsel will know which issues require contact through counsel and which issues permit contact with the client..

Review Forms, Papers and Processes

13) Review your local rules to modify any that may contradict limited scope of representation rules.

14) Work out procedures with the court clerk's office to make sure they know how to reflect the representational status of the litigant in their case management system. They are on the front line in dealing with many of the issues surrounding limited scope representation and need to be aware of the issues and techniques for dealing with them.

15) Use the Judicial Council form or a similar draft while that form is in the comment process. Have a copy provided to the other side. Get a clear understanding of the limitations on scope from the attorney.

16) Send comments on the proposed Judicial Council form so that it can be made as useful as possible. Let the Administrative Office of the Courts staff attorneys know as issues and problems come up so that they can be considered and addressed with the State Bar.

17) When problems arise, work with the local bar to develop practical solutions. For example, if you want to be sure that settlement conferences don't have to be continued so the self-represented litigants can consult with their advisory counsel, let them know that they are responsible for notifying their consulting/advisory counsel and making arrangements for them to be available on standby or otherwise as appropriate. It is most effective if you meet periodically with the bar to discuss these issues and work out solutions which work for both of you.

Monitor Quality

18) Convene meetings of the family law bar and legal service programs to discuss limited scope representation and suggest that they continue a working group to develop standards of care (as in Contra Costa), informational materials for litigants, fee agreements and office tools, and develop working relationships, referral systems and protocols.

Financial Issues

19) Award attorneys fees for limited scope services when otherwise appropriate and let attorneys know what forms or information they need to provide to substantiate the claim for fees. This is especially important if the attorney is not appearing of record, but assisting in the preparation of forms, declarations and the like.

20) Be sensitive to the economic issues. For example, if an attorney is in court for limited scope, even a routine continuance can impose a real hardship by pricing the service outside the client's reach. If there's only money for one appearance, and it is wasted, no net benefit is acquired and the funds which might have been properly applied to a limited appearance are wasted. Likewise, be sensitive when opposing counsel is delaying or otherwise obstructing for tactical reasons.

Lawyers and litigants are looking to you for guidance and approval, and they will pick up on subtle signals. By letting them know that you are aware of the practical problems they face, you are creating a climate of creative innovation and mutual problem solving. ■

Reprinted from *The Bench*, news journal of the California Judges Association, Summer 2003.

PROVIDENCE Journal

Print Page

By Katie Mulvaney?
Journal Staff Writer

June 22. 2015 11:15PM

Rhode Island Supreme Court ruling opens door for legal help

PROVIDENCE, R.I. — A recent state Supreme Court decision is widening the menu of legal services Rhode Islanders can choose from when they represent themselves in court — a move advocates praise as improving access to justice for people who can't afford the "Cadillac" of legal help.

The high court earlier this month cleared the way for lawyers to provide a limited scope of representation — including writing briefs — for people representing themselves, as long as those services are reasonable and the litigant gives informed consent. Lawyers must sign any pleadings that they help a client prepare and disclose extent of their role in the case.

Peter S. Margulies, a Roger Williams University School of Law professor, lauded the decision as giving people the flexibility to get the "Camry" of legal services versus the "Cadillac." Often, it's people facing debt collection, grappling with landlord-tenant disputes or going through divorce who go it alone in court.

"It frees up lawyers to help people who are representing themselves who desperately need help," Margulies said. And yet, the framework provided by the court would hold lawyers accountable, he said.

Melissa Darigan, president-elect of the Rhode Island Bar Association, said the court had given lawyers clear, understandable guidance that would allow litigants to get some level of legal assistance while managing costs. In Rhode Island, she said, "it's traditionally been all in or all out."

Darigan predicted that it would assist the court in managing cases, as people representing themselves require oversight and hand holding that can bog down proceedings. She viewed it as a sign that Rhode Island is keeping pace with other states.

The decision grew from complaints brought by banks and credit-card companies seeking to collect debts against three Rhode Islanders. In each case, a lawyer acting on behalf of a national debt-consolidation company drafted documents that the debtors then filed in court in their own names.

In two of the cases, Superior Court Judge Sarah Taft-Carter found that lawyers Wendy Taylor Humphrey and Michael E. Swain violated Supreme Court Rules of Civil Procedure and Rules of Professional Conduct by writing documents anonymously and telling their clients to submit them as if they had written them themselves. Taft-Carter accused the lawyers of "deceitful conduct." Not revealing their involvement could have given their clients an unfair advantage because courts often extend leeway to pro se litigants, she said. She sanctioned each $750.

Superior Court Judge Brian Van Couyghen similarly found that ghostwriting was in conflict with court rules. The judge ordered lawyer Charles M. Vacca Jr. to cease and desist anonymous briefs and provide written notice to court of every case in which he played a similar role.

All three lawyers appealed the sanctions to the Supreme Court. The court asked the bar association — which initiated its own study into limited scope representation — and the state Attorney General's office to weigh in on this "evolving aspect of the legal profession."

Assistant Attorney General Rebecca Partington advised caution "on behalf of consumers" and urged the court not to allow lawyers to offer "boilerplate pleadings to unsophisticated litigants" who then offer them up as their own. Ghostwriting, she wrote, violates court rules and constitutes fraud upon the court.

The high court concluded that court rules dictate that pleadings must be signed by the attorney of record or a party, but that the difficulty with ghostwriting is that the lawyers involved don't technically act as "attorney of record" and thus can't be sanctioned under its terms, wrote Chief Justice Paul A. Suttell. While the court agreed that the rule is intended to enforce a lawyer's ethical obligations, it said it did not view the lawyers' assistance in drafting documents as an ethical breach. The court vacated the sanctions in what was a case of first-impression in the state.

The topic of ghostwriting is subject to varying interpretations by courts and ethics commissions nationwide. Some have found the practice violates ethics rules and should be banned, while others see room for lawyers to offer limited services. New York allows ghostwriting altogether. The practice has won support of legal organizations, including the American Bar Association. In 2007, the ABA determined that lawyers could provide legal assistance without disclosing their role as long as it doesn't compel the client to mislead the court.

The Supreme Judicial Court in Massachusetts in 2009 allowed lawyers to limit the scope of their involvement in legal cases in five of its trial courts as long as their clients signed on. That means lawyers may assist a client by ghostwriting, but must indicate "prepared with the assistance of counsel."

The state Supreme Court is accepting written feedback on its new policies through Jan. 15.

— *kmulvane@providencejournal.com*

(401) 277-7417

On Twitter: @kmulvane

HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE *

A Report of the Modest Means Task Force

American Bar Association
SECTION OF LITIGATION

Mark H. Tuohey III: Co-Chair
Steven O. Rosen: Co-Chair
Hon. Laurie D. Zelon: Co-Chair
Susan M. Hoffman
Thomas A. Marrinson
Michael A. Millemann, Reporter
Christina M. Tchen
David J. Van Susteren

* Includes an Appendix of Practice Forms, Limited Scope Legal Assistance Rule Revisions, and Ethics Opinions.

TABLE OF CONTENTS **Page**

The full ABA Handbook on Limited Scope Legal Assistance is available at:
https://apps.americanbar.org/litigation/taskforces/modest/report.pdf

Tab E

Loan Payments, Debt

The New York Times

SUNDAYREVIEW | EDITORIAL

The Law School Debt Crisis

By **THE EDITORIAL BOARD** OCT. 24, 2015

In 2013, the median LSAT score of students admitted to Florida Coastal School of Law was in the bottom quarter of all test-takers nationwide. According to the test's administrators, students with scores this low are unlikely to ever pass the bar exam.

Maxwell Holyoke-Hirsch

Despite this bleak outlook, Florida Coastal charges nearly $45,000 a year in tuition, which, with living expenses, can lead to crushing amounts of debt for its students. Ninety-three percent of the school's 2014 graduating class of 484 had debts and the average was almost $163,000 — a higher average than all but three law schools in the country. In short, most of Florida Coastal's students are leaving law school with a degree they can't use, bought with a debt they can't repay.

If this sounds like a scam, that's because it is. Florida Coastal, in Jacksonville, is one of six for-profit law schools in the country that have been vacuuming up hordes of young people, charging them outrageously high tuition and, after many of the students fail to become lawyers, sticking taxpayers with the tab for their loan defaults.

Yet for-profit schools are not the only offenders. A majority of American law schools, which have nonprofit status, are increasingly engaging in such behavior, and in the process threatening the future of legal education.

Why? The most significant explanation is also the simplest — free money.

In 2006, Congress extended the federal Direct PLUS Loan program to allow a graduate or professional student to borrow the full amount of tuition, no matter how high, and living expenses. The idea was to give more people access to higher education and thus, in theory, higher lifetime earnings. But broader access doesn't mean much if degrees lead not to well-paying jobs but to heavy debt burdens. That is all too often the result with PLUS loans.

The consequences of this free flow of federal loans have been entirely predictable: Law schools jacked up tuition and accepted more students, even after the legal job market stalled and shrank in the wake of the recession. For years, law schools were able to obscure the poor market by refusing to publish meaningful employment information about their graduates. But in response to pressure from skeptical lawmakers and unhappy graduates, the schools began sharing the data — and it wasn't a pretty picture. Forty-three percent of all 2013 law school graduates did not have long-term full-time legal jobs nine months after graduation, and the numbers are only getting worse. In 2012, the average law graduate's debt was $140,000, 59 percent higher than eight years earlier.

This reality has contributed to the drastic drop in law school applications since 2011, which has in turn exacerbated the problem — to maintain enrollment numbers, law schools have had to lower their admissions

standards and take even more unqualified students. These students then fail to pass the bar in alarmingly high numbers — in 2014, the average score on the common portion of the test was the lowest in more than 25 years.

How can this death spiral be stopped? For starters, the government must require accountability from the law schools that live off student loans. This year, the Obama administration extended the so-called gainful employment rule, which ties a school's eligibility to receive federal student loans to its success in preparing graduates for jobs that will enable them to repay their debt. The rule currently applies only to for-profit law schools, all of which, given their track records, would fail to qualify for federal loans.

This rule should also apply to nonprofit schools. If it did, as many as 50 nonprofit schools could fail as well, based on one measure that considers students' debt-to-income ratio. Another good idea would be to cap the amount of federal loans available to individual schools or to students. This could drive down tuition costs, and reduce the debt loads students carry when they leave school.

Perhaps the most galling part of this crisis is the misallocation of resources. Even as law schools are churning out unqualified graduates stuck under hopeless mountains of debt, millions of poor and lower-income Americans remain desperate for quality legal representation. Public defenders around the country rely on minuscule budgets to handle overwhelming caseloads. In many cases, the lawyers are so overworked that they cannot provide constitutionally adequate representation for criminal defendants. Civil legal services that help people with housing, immigration and workplace issues are even more scarce, with hardly any public support.

If fewer federal dollars were streaming into law schools' coffers and

more were directed to fund legal services organizations, the legal profession — and the American legal system as a whole — would be better for it.

Follow The New York Times Opinion section on Facebook and Twitter, and sign up for the Opinion Today newsletter.

A version of this editorial appears in print on October 25, 2015, on page SR8 of the New York edition with the headline: The Law School Debt Crisis. Today's Paper | Subscribe

The New York Times

THE OPINION PAGES | LETTERS

The Debt Burden of Law School Graduates

NOV. 2, 2015

American Jurisprudence volumes at the North Carolina Central University School of Law.
Ann Hermes/The Christian Science Monitor, via Getty Images

Email

Share

To the Editor:

Re "The Law School Debt Crisis"
(editorial, Oct. 25):

The New York Times fails to make its case on law school debt. Law students borrow more than undergrads, but most are able to repay, and do. The graduate student default rate is 7 percent versus 22 percent for undergrads.

Many law schools are downsizing to maintain standards. Since 2010, first-year enrollment has dropped from 52,500 to 37,900, a level last seen in 1973 — much smaller and the rule of law may begin to fray. Our country needs lawyers, prosecutors, defenders and judges, not only lawyers in big cities and big law firms.

Capping graduate federal loans as the editors suggest would fall hardest on students from modest circumstances who will not be able to attend law school or will need to resort to private loans, which are typically more expensive, and repayment is not income-contingent.

Finally, the editorial recommends that law student loan money be redirected to legal services. More money is certainly needed for legal services, but taking loan money from law students is both bad economics and bad policy.

BLAKE MORANT

KELLYE TESTY

JUDITH AREEN

Washington

The writers are, respectively, president, president-elect and executive director of the Association of American Law Schools. Mr. Morant is dean of George Washington University Law School, and Ms. Testy is dean of the University of Washington School of Law.

To the Editor:

Your editorial referring to Florida Coastal School of Law paints a picture that is not supported by the facts.

The majority of our students pass the bar, and the vast majority of our

alumni have successful careers in law. In February 2015 we had a 75 percent first-time bar pass rate, third best out of 11 law schools in the state, and an institutional ultimate pass rate of 87 percent.

You are right that Florida Coastal is a for-profit law school. But you are wrong to imply that for-profit is inherently bad. Sometimes it takes a for-profit entity to right a wrong — in this case the lack of diversity in law schools. At Florida Coastal 44.8 percent of the student body are members of minority groups.

You are also right that our students have a higher debt load than we would like. That is an area we take very seriously. But if you want to diversify the profession, then you will have to admit students who do not have the same resources as students at “elite” law schools.

In such a context, it is improper to judge schools on the size of student debt rather than on how well students repay their debt. Our alumni repay their loans at a higher rate than many “elite” universities; only about 1.1 percent of alumni at Florida Coastal are in default.

SCOTT DeVITO

Jacksonville, Fla.

The writer is dean of Florida Coastal School of Law.

To the Editor:

“The Law School Debt Crisis” raises an important social justice issue — the burden of great debt for many law school graduates.

But another social justice issue relates to law school debt. For many students, high debt drives legal employment preferences and decisions — in exactly the wrong direction. Being deeply in debt at graduation drives young lawyers *away* from crucial but less highly compensated public interest practice, which leaves low-income and moderate-income communities chronically underrepresented.

Law schools have a responsibility to provide an excellent education at an affordable price. High debt cannot be allowed to coerce young attorneys toward only the most remunerative legal practice.

As we have seen with so many graduates of CUNY School of Law, serving low- and moderate-income individuals can form the basis of a deeply rewarding career and a meaningful life.

MICHELLE J. ANDERSON

New York

The writer is dean at CUNY School of Law.

To the Editor:

Your editorial correctly notes the astronomical debt and diminishing job prospects facing most law school graduates today. While that is a problem requiring multifaceted solutions, there is a relatively simple step that could modestly increase law students' income while giving them opportunities to obtain valuable training for a future job.

The American Bar Association, which has exclusive authority to accredit the nation's law schools, prohibits academic credit for law students working for a law firm or other private legal employer if they are paid for that work. The problem is that courts have interpreted the federal Fair Labor Standards Act to prohibit employers from offering unpaid internships if the intern's work benefits the employer.

The result is that a third-year law student can work for a government or nonprofit law office (to which the wage law does not apply) and receive academic credit, but the law student cannot receive credit for the same work for a private legal employer, since the student must be paid in order for the employer to avoid the high risk of costly litigation. The A.B.A. should lift this outmoded prohibition.

DEBRA L. RASKIN

New York

The writer is president of the New York City Bar Association.

To the Editor:

"The Law School Debt Crisis" suggests that a "majority" of America's more than 200 A.B.A.-approved law schools are behaving unscrupulously by charging high tuition and saddling graduates with unmanageable debt. In fact, data shows that law school graduates have lower default rates than other professional degree holders — and a law degree continues to be a sound investment over the course of a career.

Since 2010, law schools have responded to the changed legal job market by dramatically cutting first-year enrollment by 28 percent,

which will bring supply more into line with demand. Schools, including Fordham Law, where I am dean, also have expanded scholarship aid and sharpened academic programs to provide the training employers seek.

Talented students are drawn to the legal profession because lawyers play a vital role serving individuals and institutions in our society. While The Times rightly emphasizes the need for lawyers for the indigent, cutting federal loans will only narrow the pool of people who can pursue a legal career and decrease the availability of lawyers to serve this need.

MATTHEW DILLER

New York

To the Editor:

I disagree with your editorial, which characterizes law schools as overcharging students and taking advantage of federal loans. Yes, law schools (like medical schools) are too expensive and the model under which they are constructed is being rethought, but the editorial overlooks a few important points.

In recent years, many law schools have been overhauling their programs to provide more hands-on skills training. Clinics cost more than big lectures, but they prepare lawyers for practice and teach them about their professional responsibility to serve people unable to pay for services.

Second, while the editorial accurately depicts the scarcity of lawyers to represent low-income clients, it fails to acknowledge that debt-burdened law graduates can't afford to take low-paying public service jobs unless there is a Public Service Loan Forgiveness program. This federal program benefits public service lawyers and others, including police officers, firefighters and teachers, by allowing them to earn forgiveness after 10 years of service and on-time payments.

Unfortunately, there are proposals in Congress to cap or eliminate Public Service Loan Forgiveness. It is critical to preserve this program to ensure that people can perform a vital public service without being blocked by their debt.

DAVID STERN

Executive Director

Equal Justice Works

Washington

Follow The New York Times Opinion section on Facebook and Twitter, and sign up for the Opinion Today newsletter.

A version of this letter appears in print on November 2, 2015, on page A22 of the New York edition with the headline: The Debt Burden of Law Graduates. Today's Paper | Subscribe

November 30, 2015

Equal Justice Works Become a fan
Working to provide public interest opportunities for law students and lawyers and to reduce the financial barriers preventing many from pursuing public service careers.

How Public Service Loan Forgiveness Helps Close the Justice Gap

Posted: 11/07/2014 4:15 pm EST | Updated: 10/04/2015 1:59 pm EDT

Public Service Loan Forgiveness allows borrowers to earn forgiveness on their eligible student loans after making 120 on-time monthly payments while satisfying requirements that include working full time in a qualifying public service position. But with the Higher Education Act up for reauthorization, there are increasing calls to restrict Public Service Loan Forgiveness and limit its effect. This would be a significant blow to poor- and middle-income Americans and one that would widen the justice gap.

As reported by *The New York Times*, 80 percent of poor Americans have unmet legal needs and the United States currently ranks 66th out of 98 countries in access to and affordability of civil legal services, according to the World Justice Project Rule of Law Index. If we are going to have any hope of closing this justice gap and providing effective and experienced representation to poor Americans, we need to make careers at nonprofits and in civil legal aid financially feasible. Public Service Loan Forgiveness is an essential component in doing that.

Why is that the case? Let's look at the numbers.

According to the American Bar Association, the average amount borrowed to attend a private law school is $122,158. Combine that with the almost $30,000 the average undergraduate with debt borrows, and it is easy to see why many law school graduates have more than $150,000 in student loans.

Contrast that to the median salaries for lawyers at civil legal services organizations. According to NALP, the Association for Legal Career Professionals, the median first year salary is $44,636. After 8 to 10 years of experience, the median salary is only $58,453.

Without the ability to earn Public Service Loan Forgiveness, public defender offices, nonprofits and legal aid organizations will face even larger barriers in recruiting and - most importantly - retaining attorneys to provide experienced and high quality representation to low- and middle-income Americans.

In fact, it's so vital that many organizations that represent poor people are proactively educating incoming attorneys about their debt relief options. According to Bruce Perrone, a senior attorney with Legal Aid of West Virginia, "When we lose advocates with significant training and experience because of financial pressures and student loan debt, it really hurts. So we've begun educating every new hire, at the time of hiring, about Public Service Loan Forgiveness."

Despite the incredible benefits retaining experienced public interest attorneys provides to poor- and middle-income Americans, we've heard people argue that we can't afford it. Don't believe it. According to the Congressional Budget Office, the federal government will earn $174 billion in profits on student loans through 2023. That increases an additional $715 million if you take into account the Bipartisan Student Loan Certainty Act of 2013.

Others are arguing that Public Service Loan Forgiveness may be the cause of high law school tuition. Don't believe them either. As we'll report next week, law school tuition appears to be geared (however inefficiently) to market demand and the creation of Public Service Loan Forgiveness in 2007 has not resulted in an influx of students to law schools.

Isaac Bowers is Associate Director for Law School Engagement & Advocacy, overseeing the Student Debt, Student Engagement, and Law School Relations programs. He was previously responsible for the organization's educational debt relief initiatives. In that capacity, he wrote a weekly blog for U.S. News; conducted monthly webinars for a wide range of audiences; advised employers, law schools and professional organizations; and worked with Congress and the Department of Education on Federal legislation and regulations. Prior to

joining Equal Justice Works, he was a Fellow at Shute, Mihaly & Weinberger LLP in San Francisco, where he represented citizen groups and local agencies in environmental litigation and land use and planning issues. Isaac received his J.D. from New York University School of Law.

Follow Equal Justice Works on Twitter: www.twitter.com/EJW_Org

MORE: Law School Law School Debt Student Debt Student Debt Crisis Public Service Loan Forgiveness Law School Tuition Equal Justice Works Higher Education Act Civil Legal Aid Bipartisan Student Loan Certainty Act of 2013

Tab F

Modest Means Proposal

Casper Journal

Wyoming State Bar launches Modest Means Program

Ashley Bebensee Nov 17, 2015 0

The Wyoming State Bar is pleased to announce the launch of the Modest Means Program. The MMP is a reduced-fee referral service designed to make legal services accessible to lower- and moderate-income citizens who surpass the income threshold for legal aid.

The target audience for the Modest Means Program is those citizens whose household incomes are between 200 percent to 250 percent of the Federal Poverty Guidelines.

Wyoming attorneys volunteering to participate in the Modest Means Program agree to charge clients no more than a $500 retainer (if necessary) and $75 per hour.

MMP attorneys are available to assist with the following types of legal issues: uncontested divorce, child support, custody, bankruptcy, collections, guardianships, tenant issues, elder law (conservatorship, power of attorney and wills), minor criminal matters and matters involving veterans.

“Many Wyoming citizens do not meet the income eligibility requirements to receive legal aid,” said Devon O’Connell, president of the Wyoming State Bar. “Unfortunately, these people cannot afford to pay standard

attorney fees either. The Wyoming State Bar is a proud partner in the access to justice efforts around the state, and this program will help fill this critical gap."

Those interested in learning more about the Modest Means Program should contact the Wyoming State Bar at 307-432-2107 or go to www.wyomingbar.org.

Tags Wyoming State Bar | Modest Means Program | Federal Poverty Guidelines | Devon O'connell

Ashley Bebensee

(0) comments

Welcome to the discussion.

Log In

Standing Committee on Lawyer Referral & Information Service

ABA GROUPS
Clearinghouse
Modest Means Programs
ABA Model Rules and LOGO Application
Administrative Policies
Americans with Disabilities Act (ADA)
Brief Advice/ Hotlines
Budgets
Call Center Operations
Committees
Job Descriptions
Marketing
11 more

Modest Means Programs

Modest Means Programs

Starting a modest means program can often include surveying your panel membership to assess interest.

Developing a Modest Means Program Panel

Modest Means program survey conducted in 2008. Thirty-three programs provided program operation information in the area of:

Following are program profiles, many of which include extensive program explanation material.

California

Updated: 12/29/2008

Tab G

Non-Lawyer Specialists

The Washington Post

Opinions

Who says you need a law degree to practice law?

By Robert Ambrogi March 13

Robert Ambrogi is a lawyer and writer in Massachusetts.

Michelle Cummings never went to law school. Her formal college education ended in 1998, with a paralegal studies degree from Highline Community College in Des Moines, Wash. But this summer, Cummings could start taking on legal clients who need help filing for divorce or child custody. Like a fully licensed attorney, she'll be able to open an office and set her own fees.

Cummings is part of Washington state's ambitious experiment to revolutionize access to legal services, particularly among the poor. In the United States, 80 to 90 percent of low-income people with civil legal problems never receive help from a lawyer. This means that domestic violence victims might file for a restraining order alone. Couples who want to divorce might do it without counsel. In some states, parents who have lost custody of their children might fight that decision without any guidance.

Columbia law professor Risa Kaufman has called this a "human rights crisis." And it's fueled by the sky-high price of legal help. In 2014, even lawyers with less than three years' experience billed an average of $255 an hour (though, of course, rates vary widely). Most younger lawyers, saddled with tens of thousands of dollars in law school debt, can't charge more affordable rates. And legal aid offices, meant to fill the gap, are shedding funding and services at an alarming rate.

Washington state's answer is a new class of legal professionals called "limited license legal technicians." They are the nurse practitioners of the legal world. Rather than earning a pricey law degree, candidates take about a year of classes at a community college, then a licensing exam. Once they do, they can help clients prepare court documents and perform legal research, just as lawyers do. "It will save time and heartache," says Paula Littlewood, executive director of the Washington State Bar Association. "It's groundbreaking."

California, Oregon, Colorado and New Mexico say they may follow Washington's lead. The program, if it spreads, could transform how middle- and lower-class Americans use the law.

The government is required to provide counsel in criminal cases. But when it comes to civil suits (everything from consumer issues to employment, real estate and family law), people are often on their own.

One 2013 study found that 66 percent of adults had struggled with a "civil justice situation" in the past 18 months. Seventy-eight percent did not seek help from a lawyer. In a 2010 survey of 1,200 trial judges, respondents said they'd seen a significant uptick in the number of people representing themselves since the 2008 economic recession. When she unveiled the survey results, Carolyn B. Lamm, then president of the American Bar Association, noted that "this includes not only the poor but the middle class because . . . middle-class people are unable to spend to retain lawyers."

In that same survey, 62 percent of judges said the outcomes for people without counsel were worse. "People end up being buffeted about" the legal system, says David Udell, executive director of the National Center for Access to Justice. "The consequences can be failure to understand or enforce an order that can prevent ongoing violence or protect the safety of kids. It can mean losing the right to continue to live in one's home."

In theory, legal aid programs should step in once people are priced out of private counsel. But most are severely strapped for cash. The Legal Services Corporation, which funds 134 providers across the country, saw Congress cut its budget by $80 million between 2010 and 2013. Over the past couple of years, at least 1,200 legal aid workers, about 1 in 7, have lost their jobs. Some states have fewer than one civil legal aid lawyer per 10,000 residents who fall below the federal poverty line.

Washington state is no different. A 2003 study found that low-income people handled more than 85 percent of their legal problems without help from an attorney. "We have people come in who relied on

a friend who thought he knew how to fill out paperwork," Cummings says of the clients she sees at Fiori Law, where she's a paralegal. "Then they'd go to court and get creamed. They'll come to us, and we'll look at their paperwork and it's a disaster."

The report pointed to people like Ruth, 37, who was unable to afford her mortgage payments after her divorce. Her bank threatened to foreclose, and then her ex-husband hired a private attorney and sued for full-time custody rights of their son. Ruth couldn't afford a lawyer and had to navigate the system herself, which slowed the case and brought intense extra stress during a difficult time.

Or Debra, 47, a domestic violence survivor facing cancer surgery. A legal adviser could have helped her avoid foreclosure on her home and ensure that the government paid for her medical treatment.

The Supreme Court of Washington state studied the issue and, in 2012, adopted a rule that allowed licensed non-lawyers to practice law in some limited ways. The court then appointed a 13-person Limited License Legal Technician Board to figure out what these LLLTs would need to know and how they should be chosen.

Working with a handful of state law schools, the board put together a list of requirements: Candidates would need to learn civil procedure, legal research, contracts and advanced family law. Twenty-nine community and technical colleges signed on to offer the necessary courses. The first class of 15 candidates matriculated in the winter of 2014.

All told, the program costs about $10,000 — far less than the average public-school law degree, which is $50,000. Finally, they apprentice under a lawyer for 3,000 hours before they hang their shingles.

"They're highly trained in a specific field of law," says Steve Crossland, who chairs the LLLT board. "In some ways, it's more intensive training than what a lawyer gets."

There are some limits. Washington's LLLTs will be restricted to family-law issues, though administrators may eventually expand the program's purview. And they can't represent clients in court.

So far, the program has mostly attracted paralegals. The appeal, Cummings says, is the autonomy. "Paralegals tend to multitask," she says. "I'll get to finally sit down at my desk, focus on the client and do the job they are paying me to do."

Not everyone is so excited.

The Washington State Bar Association opposed the LLLT proposal right up until its approval by the Supreme Court. It argued that the rigorous training lawyers receive is essential to competently handling legal matters and protecting clients' best interests. "All we're providing is access to injustice, because the class of individuals described is not going to have the competency to actually do for the poor what needs to be done," Ruth Laura Edlund, former chair of the state bar's Family Law Section, said at a forum on the idea. "Just because you're poor doesn't mean your legal problems are simple."

These concerns, though, ignore the basic economics of practicing law. "Many clients can't afford what lawyers need to recoup to service their debt load," says Elie Mystal, an editor of the legal news Web site Above the Law. "And so we have this weird situation where we both have too many lawyers and underserving of clients."

Since an LLLT license is so much more affordable than a bar accreditation, candidates say they'll charge considerably less than lawyers do, Crossland says.

Some Washington state lawyers also complained that the program would tighten an already tough job market. Only 84.5 percent of recent law school grads are employed. But LLLTs won't replace lawyers, who will still be needed when a client goes to court or confronts a particularly challenging legal issue. Down the line, the program might even discourage some people from going to law school in the first place, reducing the glut of law grads competing for a limited number of positions. "You've got a class of people who want to increase their earning potential through doing low-level legal work, but they don't want to invest three years and $150,000 in debt," Mystal says. "This seems like a great option."

Of course, Washington's LLLT program won't completely solve the access-to-justice crisis. But it's part of a broader movement to lower the cost of legal services. Companies like LegalZoom and Rocket Lawyer, which started out providing affordable, do-it-yourself legal forms for everything from starting a business to completing a will are thriving. They are beginning to expand the services they offer, ranging all the way to direct advice from a lawyer. LegalZoom had served some 2 million customers as of 2012, according to Securities and Exchange Commission filings

Meanwhile, there is increasing support for state bars to follow Britain's lead and lift their bans on non-lawyer ownership of law practices. This would free corporations to deliver legal services on a broader scale and at more affordable prices. One day, customers could go to stores like Walmart to consult an attorney.

Even the public face of the legal profession, the 400,000-member American Bar Association, is beginning to acknowledge that the crisis is too big for lawyers to solve alone. In a January 2014 report, an ABA task force on the future of legal education called on states to license "persons other than holders of a JD to deliver limited legal services." Among the panel's 28 members were two key organizers of Washington's program.

"We need to take a leaf from the medical profession, which has long recognized that people with health problems can be helped by a range of assistance providers with far less training than licensed physicians," New York Court of Appeals Chief Judge Jonathan Lippman said in his 2014 state of the judiciary report. "We all accept that. Why not the same in the law?"

ambrogi@gmail.com

FEATURES

Washington state moves around UPL, using legal technicians to help close the justice gap

POSTED JAN 01, 2015 05:50 AM CST

BY ROBERT AMBROGI

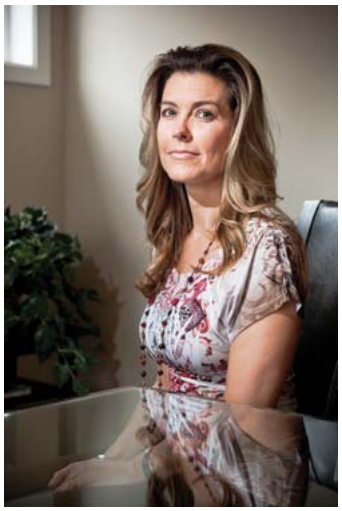


Photo of Michelle Cummings by Tim Matsui

Michelle Cummings looks forward to this spring, when she expects to take on her first law client. By then, the Auburn, Washington, resident will have completed her studies and taken the state licensing examination. Provided she passes, she will begin practicing right away.

Cummings' story could be that of any number of new lawyers looking forward to finishing law school and taking the first fledgling steps of their careers. But Cummings is not attending law school—at least not as lawyers know it—and she has no plans to become a lawyer.

Rather, Cummings is on a historic path to become one of Washington's (and the nation's) first limited license legal technicians. These nonlawyers will be licensed by the state to provide legal advice and assistance to clients in certain areas of law without the supervision of a lawyer.

The first practice area in which LLLTs will be licensed is domestic relations. Cummings and 14 others have taken the required courses and will sit for a licensing examination in March. The state will begin licensing those who pass in the spring.

Cummings' focus will be family law. For now, she plans to work at the Fiori Law Office, a two-lawyer Auburn firm. Someday she may start a practice of her own.

"I like the idea of being part of a firm," Cummings says. "If Loretta were to retire, then I have the option of hanging my own shingle. I like that idea, knowing that I'm building an opportunity where I wouldn't have to find a new job."

A paralegal since 1998, Cummings is also excited about having clients of her own. "Paralegals tend to multitask. I'll get to finally sit down at my desk, focus on the client and do the job they are

paying me to do."

NOSING IN

Within a profession that so guardedly polices its practice, many may see Cummings and her classmates as representing the proverbial camel's nose under the tent. So far, Washington stands alone in formally licensing nonlawyers to provide legal services. But California is actively considering nonlawyer licensing, and several other states are beginning to explore it. New York has sidestepped licensing and is already allowing nonlawyers to provide legal assistance in limited circumstances while also looking to expand their use.

In its January 2014 final report, the ABA Task Force on the Future of Legal Education called on states to license "persons other than holders of a JD to deliver limited legal services." Now this issue of allowing nonlawyers to provide legal services is among the topics being taken up by ABA President William C. Hubbard's Commission on the Future of Legal Services.

"I fully anticipate that it will be one of the concepts that will be addressed by the commission," Hubbard says, noting that his appointees to the 28-member commission include both Barbara A. Madsen, chief justice of the Washington Supreme Court, which promulgated the LLLT rule, and Paula Littlewood, executive director of the Washington State Bar Association, which administers the LLLT program.

"The states are the laboratories of invention," Hubbard adds. "This is a good example of that. I think there is growing acceptance by regulators and private practitioners of law that we need to do things differently."

Proponents maintain there is simply no other way to address the justice gap in the United States. They cite multiple state and federal studies showing that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford.

If lawyers cannot fill the gap, the proponents say, we must find some other way.

"Even with whatever success we've had with public funding of legal services and pro bono work by lawyers, there is still a gaping hole in our system of providing legal services to the poor and people of limited means," says New York Court of Appeals Chief Judge Jonathan Lippman, who has emerged as a leading advocate of allowing nonlawyers to provide limited services.

"We need to think out of the box and look at every possible avenue for filling this justice gap," Lippman says. "You can get nonlawyers who are experts in a particular area of legal assistance and who can be more effective in that area than a generalist lawyer."

Lippman says his interest in using nonlawyers was sparked by Gillian K. Hadfield, a professor of law and economics at the University of Southern California and another leading advocate for using nonlawyers to bridge the justice gap. After hearing her speak at a Harvard Law School forum, he invited her to New York to testify before his Task Force to Expand Access to Civil Legal Services.

"There is an urgent need for the judiciary to change the landscape of options available to those with legal needs," Hadfield said in her Oct. 1, 2012, testimony, "to exercise your ultimate authority to decide who can provide legal assistance by expanding that list beyond expensive JD-trained and bar-licensed attorneys.

"Of course we want some services delivered only by expensive JD-trained and bar-licensed attorneys—we only want surgery performed by surgeons too," Hadfield continued. "But where are our nurse practitioners? Our legal systems desperately need the equivalent of nurse practitioners and other non-MD health care providers. We need non-JD legal providers who can perform simpler legal work at much lower cost and thereby fill an enormous part of the gaping legal need in this state."

In May 2013, Lippman appointed a committee with the specific charge of studying this issue, the Committee on Non-Lawyers and the Justice Gap. He asked the committee to focus on the use of nonlawyers in housing, elder law and consumer credit cases—areas where as many as 90 percent of litigants in the New York courts are without lawyers.

NEW YORK'S NAVIGATORS

The recommendations of this committee resulted in Lippman's launch in February 2014 of a pilot program in which nonlawyers, called navigators, provide free assistance to unrepresented litigants in housing cases in Brooklyn and consumer debt cases in the Bronx and Brooklyn. Navigators provide a range of assistance, from general information given at help desks to one-on-one help completing legal forms and assisting in settlement negotiations.

Navigators may also accompany unrepresented litigants into the courtroom. While they are not allowed to act as advocates in court, they are able to answer questions from the judge and to provide the litigants "moral support."

In Albany, Lippman created a second project that uses nonlawyers to advise elderly and homebound residents about their eligibility for benefits and other services.

Photo of Jonathan Lipman by Len Irish

"Perhaps we need to take a leaf from the medical profession, which has long recognized that people with health problems can be helped by a range of assistance providers with far less training than licensed physicians," Lippman said in announcing the initiatives during his 2014 state of the judiciary address. "We all accept that. Why not the same in the law?"

New York's navigators are generally college and law students. They must commit to volunteer for a minimum of 30 hours within three months of their training. A 2½-hour seminar and accompanying manual train them in the basics of housing and consumer-debt cases, as well as interviewing and communication skills. They receive no formal licensing.

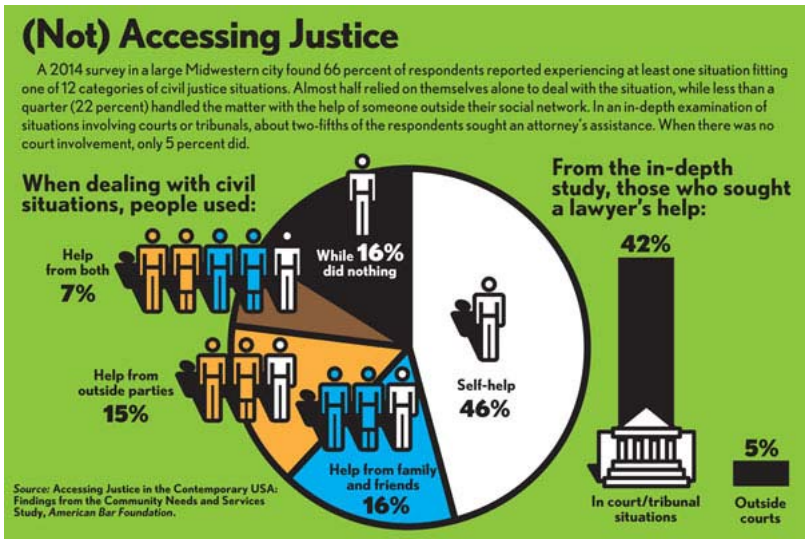
Some receive a stipend for their work, such as Sagar Sharma, a prelaw senior at the City College of New York. He came into the program through a summer internship sponsored by Skadden, Arps, Slate, Meagher & Flom. Sharma's full-time work in the housing court last summer earned him an award for outstanding volunteer service.

By contrast, the Washington program under which Cummings hopes to be licensed looks surprisingly similar to state schemas for lawyer licensing and oversight.

It is regulated by the state supreme court and administered by the court-appointed Limited License Legal Technician Board. Like lawyers, LLLTs will be subject to strict education requirements, must pass a qualifying examination, will be subject to disciplinary procedures and ethical rules, and must be covered by malpractice insurance.

The Washington Supreme Court created the LLLT program on June 15, 2012, with its promulgation of Admission to Practice Rule 28. In an opinion that accompanied the rule, the court explained that it acted in response to "a ballooning population of unrepresented litigants."

"The authorization for limited license legal technicians to engage in certain limited legal and law-related activities holds promise to help reduce the level of unmet need for low- and moderate-income people who have relatively uncomplicated family-related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome," the court said.



Graphic by Jeff Dionise

BORN FROM CONCERNS

Ironically the rule had its genesis in concerns about unauthorized law practice in the state. Acting on the belief that the UPL problem was driven, at least in part, by the lack of a definition of authorized law practice, the state bar formed a committee in 1998 to come up with one. In 2001, the supreme court adopted the committee's recommended definition as General Rule 24.

The court, however, was concerned that simply defining law practice would not be enough to protect the public from unauthorized practice, recalls Stephen R. Crossland, a Cashmere, Washington, sole practitioner who served on the UPL committee. For this reason, the court simultaneously promulgated General Rule 25, creating a Practice of Law Board to "make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services." The court named Crossland chair.

As the POLB went to work studying the expanded use of nonlawyers, another committee was also at work in Washington studying the extent to which the state was meeting the civil legal needs of its residents. In a 2003 report, the committee concluded that low-income people in Washington face 88 percent of their legal problems without help from an attorney. Existing legal services programs, the study said, "are unable to address more than a very small portion of existing demand, never mind expanded demand."

These findings dovetailed with the work of the board and helped spur it to propose a rule authorizing legal technicians, Crossland says. "We called it a legal technician rule, but I think a better way to categorize it is as another category of authorized legal service providers."

In 2006 the POLB submitted the draft rule to the board of governors of the Washington State Bar Association. The response was, perhaps, predictable: The board voted to oppose it. Still, board members left the door open for the POLB to revise the rule and return for reconsideration.

The POLB refined the rule and drafted regulations to govern its implementation. In January 2008, it submitted its revised proposal to the supreme court for approval. The state bar's board of governors asked the court to hold off on action so as to give them time to solicit feedback from members and formulate a position. Late in 2008, the board of governors again voted to oppose the rule.

For four years, the rule sat at the supreme court. In 2009 the court published the rule for public comment. It twice placed the rule on its agenda for a vote, in 2010 and 2011, but each time it tabled the vote to a later date.

Then in February 2012, the POLB submitted further revisions to the court. The revisions were an attempt to address some of the concerns of the state bar, which remained opposed to the proposed rule. This version also changed the name from "legal technician" to "limited license

legal technician." In June 2012, the supreme court finally voted to approve the rule, effective Sept. 1, 2012.

"The licensing of limited license legal technicians will not close the justice gap identified in the 2003 civil legal needs study," the court says in its order. "Nor will it solve the access-to-justice crisis for moderate-income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law-related services to members of the public in need of individualized legal assistance with noncomplex legal problems."

Photo of Gillian Hadfield by Jonah Light

INDEPENDENCE WAY

In Washington legal circles they are now known as "triple-LTs." They will be free to set their own fees and work independently of lawyers, even opening their own offices. The laws of attorney-client privilege and of a lawyer's fiduciary responsibility to the client will apply just as they would to an attorney.

LLLTs will be authorized to help clients prepare and review legal documents and forms; advise them on other documents they may need; explain legal procedures and proceedings, including procedures for service of process and filing of legal documents; and gather relevant facts and explain their significance. They may also perform legal research, but only if the work is approved by a Washington lawyer.

LLLTs may not accompany clients into court or engage in negotiations on a client's behalf. The LLLT board is considering whether to propose an amendment to the rule that would allow LLLTs to engage in these activities.

To become an LLLT, an applicant must have at least an associate's degree and complete 45 credit hours of core curriculum currently being taught at community colleges in the state. The core curriculum is specified by court rule and covers topics such as civil procedure, contracts, legal research and writing, professional responsibility, and law office procedures and technology.

In addition, applicants must complete courses specific to the practice area in which they seek to be licensed. For family law, the only approved practice area so far, the 15-hour curriculum was developed jointly by the state's three ABA-approved law schools—at Gonzaga University, Seattle University and the University of Washington. Applicants also must have 3,000 hours of substantive law-related work experience supervised by a licensed lawyer.

To help get the program started, the LLLT board decided to offer a waiver of the core education requirements until Dec. 31, 2016. To qualify for the waiver, applicants must have passed a certified paralegal examination and have completed 10 years of experience working as a paralegal under a lawyer's supervision. (The candidate must apply within five years of completing those 10 years of work experience.)

Once licensed, LLLTs will be subject to a regulatory framework similar to that for lawyers. They will be required to pay an annual license fee, fulfill annual continuing education requirements, set up IOLTA accounts for handling their clients' funds, and maintain professional liability insurance in the amount of at least $100,000 per claim and $300,000 annual aggregate.

IN CALIFORNIA, CRITICAL NEEDS

Down the Pacific coast, State Bar of California officials have been paying close attention to Washington's program. In March 2013, the bar appointed a Limited License Working Group to look at whether California should adopt a similar legal technician program. After a series of public hearings, the working group came out in July 2013 in favor of the concept and urged the bar to conduct an expanded study.

Craig Holden, now California state bar president, chaired that working group and believes the need for alternative licensing models is unavoidable given the crisis in the delivery of legal services.

"The fact is that the justice gap has grown exponentially in the last several years," says Holden, a Los Angeles-based partner at Lewis Brisbois Bisgaard & Smith. "Since the 2008 recession, more than 6 million Californians have fallen below the poverty line."

Compounding the problem, he says, is that funding for legal services has dropped precipitously due to historically low interest rates causing dramatic reductions in IOLTA programs, a principal source of legal services funds.

"As a service profession, we must recognize that when you have 90 percent of people in critical areas of need not using lawyers because they can't afford them, then by any definition that's a crisis," he says.

California should authorize limited licenses similar to the Washington model in areas of significant need, such as family law, immigration and landlord-tenant law, Holden believes, with the licenses subject to strict requirements for education, experience and examination.

"This is not designed to take food off lawyers' plates," Holden says. "It is designed to home in on that large body of consumers who cannot hire a lawyer and who lawyers are not serving in any event."

Joseph L. Dunn, former state bar executive director, agrees. He sides with those who argue the economics of law practice make it impossible for lawyers to charge prices most consumers can afford. "This is not just a problem for the poor—it's gone beyond the poor to the middle class."

In November 2013 the California bar appointed a Civil Justice Strategies Task Force with a broad mandate to develop a plan for addressing the state's justice gap. The limited license is among the topics it is considering.

Even if the task force comes out in favor of a limited license, it could be years before a proposed rule would be presented to the state supreme court, Holden notes. How it would be received there is anyone's guess.

OTHER STATES

The idea of authorizing nonlawyers to provide limited legal services has percolated for years. In the early 1990s, both California and Oregon appointed task forces to consider limited licensing. Washington already has a form of limited practice, the "limited practice officer," approved in 2009 to help prepare documents for real estate and personal transactions. California, too, permits "legal document assistants" to provide aid to consumers.

But as other states confront their own justice gaps, Washington's first-in-the-nation limited-license rule seems to have captured their attention and spurred new interest in nonlawyers as a partial solution.

"We have received a flurry of interest from other states that are looking at this," says Paula Littlewood, the Washington bar's executive director. "People say to me: 'It scares me to death, but I know it is coming.' "

Crossland, who chairs the LLLT program, says, "I've had conversations with Colorado, New Mexico and California, and I've also spoken to New York, Ohio, Oregon and North Carolina."

CONCERN FOR CONSUMERS

In both Washington and California, opposition to limited licensing has focused on the potential harm to consumers. Even with advanced training, opponents say, legal technicians differ little from paralegals and lack the competency to handle complex legal matters without an attorney's supervision.

Typical of this view was the testimony presented by Seattle family lawyer Ruth Laura Edlund, a partner at Wechsler Becker and the former chair of the WSBA's Family Law Section, at a Feb. 23, 2012, town hall forum sponsored by the bar to air views on the limited license proposal.

"This rule is in my view a feel-good rule that would make us feel that we're doing something good, but all we're providing is access to injustice, because the class of individuals described is not going to have the competency to actually do for the poor what needs to be done," Edlund said. "Just because you're poor doesn't mean your legal problems are simple."

Opponents in California raised similar concerns. In a Feb. 1, 2013, letter to the California bar, solo Stephen E. Ensberg of West Covina questioned the competency of paralegals to provide unsupervised legal services. He said that clients frequently come to him to fix work done by independent paralegals and document preparers who have no attorney supervision.

"The state bar proposal now under consideration would simply give the veneer of legality to these unauthorized, ill-trained practitioners who do more damage than good," Ensberg wrote. "And they are not cheap, in any event. The proposal for licensed nonlawyers simply exposes the public to more harm than is already the current situation."

Another common concern is that limited licensing will have limited impact. While it is complicated and potentially costly for a state to set up and administer a limited licensing scheme, there is no guarantee that LLLTs will make any measurable gain in closing the justice gap, or even that they will charge affordable fees for their services, some say.

"Anyone who hangs out a shingle is operating in a business model that is enormously expensive," says Hadfield, the USC law and economics professor. The same factors that keep lawyers' hourly rates high—payroll, overhead, insurance, marketing and the like—will prevent LLLTs who hang out a shingle from charging affordable rates, she argues.

But Littlewood believes LLLTs will be able to keep their hourly rates low. The cost of entry to become one is much lower than to become a lawyer, she notes, so LLLTs are not burdened with debt starting out. Additionally, market forces will keep LLLT rates low, she argues. "If they charge near what a lawyer charges, the consumer will go to a lawyer."

Hadfield believes licensing nonlawyers alone will have only minimal impact in addressing the need for legal services. To make LLLT practice economical requires economies of scale, she argues, and that can be achieved only if private companies are allowed to provide legal services.

"Suppose LegalZoom or Rocket Lawyer could hire LLLTs and have them answering phone calls, engaging in online chats—maybe even manning retail outlets—and giving assistance actually filling out the forms and navigating the procedures, all based on protocols developed by lawyers and by the company," says Hadfield, who sits on LegalZoom's Legal Advisory Council. "That's the way you significantly reduce the gap. Then the LLLT can be hired at lower cost."

Hadfield further believes state regulation, not bar licensing, is the better way to expand legal services while still protecting consumers. "I don't think the bar and state supreme courts are set up to do the kind of regulation you want." She envisions a regulatory agency such as those that oversee many medical professions. The agency would license and oversee not only the nonlawyer professionals, but also legal services companies such as LegalZoom and Rocket Lawyer.

EMBRACING OPPORTUNITY

Back in Washington, Cummings and her classmates became the first class to complete the family law courses on Dec. 3, 2014. The licensing examination is scheduled for March.

Cummings credits her employer, Loretta M. Fiori-Thomas, for encouraging her to become an LLLT.

"I know there are some attorneys who aren't thrilled about this idea, but I appreciate that my boss is embracing it," Cummings says. "She is giving me the opportunity to better myself and the opportunity to help people. That's a gift.

"I look at this primarily as an opportunity to help people," she adds. "That's really what it's all about."

Meanwhile, in California, the fate of the LLLT remains uncertain. But former state bar executive director Dunn maintains that something must be done to address the unmet need for legal services.

"The profession has been struggling for years with different answers," Dunn says. "The question going forward is whether we want to embrace LLLTs or not.

"The unmet need is not shrinking, it's growing. We as a profession have to deal with this."

This article originally appeared in the January 2015 issue of the ABA Journal with this headline: "Authorized Practice: Washington state moves around UPL, using legal technicians to help close the justice gap."

Sidebar

Among recent initiatives across the states:

• The Connecticut Bar Association's Task Force on the Future of Legal Education and Standards of Admission issued a June 2014 report recommending the state modify its practice rules "so that nonlawyers be permitted to offer some basic legal services to the public."

• The Oregon State Bar convened a Task Force on Limited License Legal Technicians in 2013. A final report and recommendation was expected before the end of last year.

• The Committee on Professional Responsibility of the New York City Bar Association issued a June 2013 report applauding the use of nonlawyer advocates such as courtroom aides and legal technicians.

• The Vermont Bar Association considered the topic of limited legal licensure at its 2013 midyear meeting and created a paralegals section of the bar that will continue to study the issue.

• The Massachusetts Bar Association voted in March 2014 to endorse the recommendations of the ABA Task Force on the Future of Legal Education, including the licensing of people other than those with law degrees.

Correction

In print and initial online versions of "Authorized Practice (http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the/)," January, University of Southern California law professor Gillian Hadfield should have been quoted as saying: "Suppose LegalZoom or Rocket Lawyer could hire LLLTs … ."

The *ABA Journal* regrets the error.

Robert Ambrogi is a Rockport, Massachusetts, lawyer and writer.

Previous:
Does the UK know something we don't about alternative business structures? (http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures/)

Next:
100 Years of Law (http://www.abajournal.com/magazine/article/one_hundred_years_of_law/)

Filed under:

States (http://www.abajournal.com/topic/states/?utm_source=website&utm_medium=web&utm_campaign=related_topics) | Consumer Law (http://www.abajournal.com/topic/consumer+law/?utm_source=website&utm_medium=web&utm_campaign=related_topics) | Law Practice Management (http://www.abajournal.com/topic/law+practice+management/?utm_source=website&utm_medium=web&utm_campaign=related_topics) | Legal Ethics (http://www.abajournal.com/topic/legal+ethics/?utm_source=website&utm_medium=web&utm_campaign=related_topics) | Legislation & Lobbying (http://www.abajournal.com/topic/legislation+lobbying/?

utm_source=website&utm_medium=web&utm_campaign=related_topics) | ABA (http://www.abajournal.com/topic/aba/? utm_source=website&utm_medium=web&utm_campaign=related_topics) | Washington (http://www.abajournal.com/topic/washington/? utm_source=website&utm_medium=web&utm_campaign=related_topics) | Features (http://www.abajournal.com/topic/features/? utm_source=website&utm_medium=web&utm_campaign=related_topics) | Bar Associations (http://www.abajournal.com/topic/bar+associations/? utm_source=website&utm_medium=web&utm_campaign=related_topics) | Business of Law (http://www.abajournal.com/topic/business+of+law/? utm_source=website&utm_medium=web&utm_campaign=related_topics)

You might also like:

- After four-year decline, percentage of female associates 'nudged up' in 2014 (http://www.abajournal.com/news/article/after_four_year_decline_percentage_of_female_associates_nudged_up_in_2014/)

We welcome your comments, but please adhere to our comment policy (/commentpolicy/). Flag comment for moderator. (/report_abuse/)

Comments

ms.chief53@yahoo.com said:

Hallelujah….

Posted: Jan 03, 2015 09:25 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386114)

TimT said:

So, the bottom line appears to me to be this: We're going to create an environment in which a legal services company can use a business model to provide the illusion of competent legal services and charge much less than lawyers can economically afford to charge, thinking that this is going to help people who would not hire a lawyer, but that it is not going to take food off of lawyer's plates because people who would have hired a lawyer will still choose to pay the lawyer's higher prices. What could possibly go wrong? Wouldn't it make more sense to address whatever makes it economically impossible for lawyers to charge affordable prices? Besides law school prices/student loans, one of those things is the systemic inefficiency in court procedure. Our judicial branches don't seem to me to have the wherewithal to reform patchwork rules and procedures that grew up in response to statutes constitutional cases, and other lawsuits. What is called 'reengineering' or total quality management or its successors in the business world hasn't scratched the surface in judicial procedures. I can't help thinking those kinds of reforms would reduce lawyer's costs and make it economically possible for me to offer lower prices.

Posted: Jan 09, 2015 07:27 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386322)

Massively bad idea said:

As if it isn't hard enough for people who went to law school to find a job - now we'll make it so that people who didn't go to law school can compete with them.

Posted: Jan 09, 2015 03:14 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386552)

Emjaycee said:

My thoughts exactly.

Posted: Jan 15, 2015 03:28 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386850)

PerfectSense said:

There's a special place for these law school professors. Their bloated salaries indentured an entire generation of lawyers, causing millions of people to go without legal services. Then they have the audacity to take what little market remains away from the serfs they created. Sleep well, Professor Hadfield.

Posted: Jan 09, 2015 12:37 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386500)

Displaced Legal Professional said:

I was a paralegal for more than eleven years. Logically, then, I should have an interest in any proposition that would permit nonlawyers to "practice" law. It would seem that such proposition would mean work for me. However, I have no such interest. I think any proposition that allows nonlawyers to "practice" law would not properly serve the public. Even with any relaxation of UPL laws I still see it as minefield I would prefer not to tread.

Moreover, sorry, but I really cannot wrap my arms around the notion that real, qualified attorney help is so unavailable. In recent years law schools have turned out scores of new attorneys. So many of these new attorneys cannot find attorney jobs. Many of these attorneys are so hungry for work and money, not to mention hungry in their stomachs, that they compete with paralegals for their jobs. So, then, why can these attorneys not take on all those folks who are starving for legal help? These attorneys certainly will not charge the same fees that a twenty-year Big Law partner will charge. Some of them might take cases pro bono at least for a time to collect experience so they are better positioned to be hired into an attorney job.

Also it's vital to note that even though these "legal technicians" might be thoroughly tested, thoroughly vetted and thoroughly licensed, the "charlatan" potential remains. These LLTs still have not received the depth of legal training attorneys receive. Even attorneys who specialize still have the breadth of knowledge to see and analyze fact patterns in greater depth than most nonlawyers - and somtimes fact patterns are not always as simple as they appear superfically. There is a reason why attorneys are referred as "counselors at law."

I am not advocating protectionism for attorneys - not by a long shot. I am advocating protectionism for consumers of legal services. Consumers deserve the best the legal industry can give them.

Finally, I agree with the above poster regarding court reform. Maybe the courts should try harder to streamline their hard-to-navigate procedures so they would be more comprehensible and user friendly.

Posted: Jan 09, 2015 02:19 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386531)

TBP said:

The ABA and law schools have destroyed the profession through their greed - they jacked up tuition to ridiculous amounts to take advantage of the federally insured student loans, and then opened up more and more law schools each and every year. Law schools LIE about salary and employment statistics to get people to enroll. Now the market is flooded with attorneys buried under mountains of student loan debt, so they cannot afford to drop their hourly rates to an amount that low income individuals can afford. Because of the ridiculous tuition hikes, now the amount of people who cannot afford legal services has grown as newly-minted lawyers just cannot lower fees due to the student loan burden.

Law professor salaries have increased significantly as the law schools raked in more and more money, yet law schools and professors FAIL to teach law students hardly anything about the actual practice of law. Law schools tightly hold onto the archaic Socratic method/case method for the sake of tradition, but it does nothing to prepare one for the practice of law. So law students pay sooooo much for so little in return.

The solution the ABA, law schools, and law professors now propose to help the poor afford legal services??? Allow people to practice law without attending law school at all. After ripping of hundreds of thousands of students across the nation and making legal services MORE expensive to high student debt loads, they now suggest letting people skip law

school altogether to represent this underserved market by charging lower fees. It was law school creed that contributed to this lack of representation for low-income individuals - those buried in debt can only lower their fees so far.

I have no ill will towards those who use this route to practice law in a limited manner - many of them will do great at the area of law they enter. My anger is towards the greed of the law school and the ABA which contributed to this mess, and the fact they they seem to be doing more to hurt new lawyers than help all the new lawyers they have pumped into the market. Also, the fact that law schools still use the archaic and utterly useless case method to 'train' lawyers to practice law in this day and age, and the fact that they charge an arm and a leg for one to 'learn' how to practice law using this method, is ridiculous.

Posted: Jan 09, 2015 02:54 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386543)

Retired Atty said:

Well said.

It looks like you have been giving some serious thought to this. That's more than what can be said about those in the law schools who have been motivated more by greed than a concern about the impact upon society.

Posted: Jan 10, 2015 02:51 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386632)

TBP said:

Some typos in my 3rd paragraph that I wanted to correct:

"After ripping of hundreds of thousands of students across the nation and making legal services MORE expensive *DUE* to high student debt loads, they now suggest letting people skip law school altogether to represent this underserved market by charging lower fees. It was law school *greed* that contributed to this lack of representation for low-income individuals - those buried in debt can only lower their fees so far."

Posted: Jan 09, 2015 02:59 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386546)

BMF said:

Will they be required to carry malpractice insurance at no less than the same rate as attorneys who practice in the same areas, such as insurance claims, family law, health care issues, and bankruptcy? (From a purely actuarial standpoint, it should cost them more, since not having the in-depth education will most likely precipitate major SNAFUs when they decide to overreach their skill set, thinking they know just as much as an attorney.)

Posted: Jan 09, 2015 10:37 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386611)

Displaced Legal Professional said:

Yes. Even if their licensing entity does not require it, they would be foolish NOT to carry malpractice and/or E&O insurance. No matter how conscientious they may be, their licenses would allow them to practice only "limited" law. It's easy to imagine a practitioner inadvertently crossing the line.

For the public's sake I would be very concerned about the borderline, overzealous and egotistical ones who would deliberately push the envelope. These types are encountered from time to time. They are on some sort of mission and use their clients as pawns to further their personal causes. Another reason why this entire notion of allowing lesser-trained people "practice" law concerns me. And, again, I was a paralegal and, logically, I should be delighted about this development. I am not.

Posted: Jan 10, 2015 09:35 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386621)

Displaced Legal Professional said:

Yes. Even if their licensing entity does not require it, they would be foolish not to carry malpractice or E&O insurance. By the very nature of their authority, i.e., practice of "limited" law, even the most conscientious of practitioners could cross the UPL line. Their clients deserve an avenue of recourse.

The practitioners I am most concerned about are the ones who see this "limited" licensure as a way to further a cause, or, worse, exercise their ego by playing lawyer. Dangerous people! Their clients very much deserve an avenue of recourse.

Once again, I was a paralegal. Again, logically, I should be delighted about this whole idea. I am not.

Posted: Jan 10, 2015 09:41 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386622)

Displaced Legal Professional said:

Apologies for the double postings.

Posted: Jan 10, 2015 09:42 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386623)

BMF said:

I can't imagine the State Bar of California approving this sort of thing any time soon. After all, these are the same people who couldn't see fit to approve bringing CA's Rules of Professional Conduct in line with the ABA Model Rules, as interpreted in most other jurisdictions, after almost five years of dithering about. The idea of the State with the most lawyers—and probably the highest number of underemployed attorneys—approving paralegals doing legal work—even on a limited basis—without some sort of backlash, is unlikely. Bar fees for attorneys currently start at $430 per year, and attorneys have to inform clients in writing that they do not carry malpractice insurance, (—which is the kiss of death when those "helpful" internet websites warn potential clients never to hire an attorney who doesn't carry malpractice insurance.)

The areas in which most people might seek out certified legal assistants would most likely be family law, small claims, landlord/tenant issues, debt collection, bankruptcy, and VA claims. In California, the Judicial Council has published enough forms and do-it-yourself manuals related to the first 4 issues for most people of average intelligence to file their own claims. There are also numerous legal aid organizations who provide help with unlawful detainer, small claims, and family law issues. W/R/T Bankruptcy, the district courts have published a similar number of forms that will enable petitioners to file everything up to responses to adversary proceedings. VA Claims representatives must be certified by the OGC and aren't permitted to collect a fee for merely filling out the forms. And since legal assistants can't give "legal advice," there goes the opportunity for the consult fee and the claims appeal.

It would be easy to go on. It's one thing for a paralegal to work on such issues with a team of attorneys, who are ultimately responsible; quite another for them to pursue it independently. In the end, clients get what they pay for.

Posted: Jan 10, 2015 09:48 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386645)

Curmudgeon said:

Dumb idea.

Posted: Jan 12, 2015 01:23 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386736)

Lee said:

I'm not an attorney, but I am a 100% service connected, disabled veteran. If you try to fight the VA for benefits that you are entitled to, you are in for very long, laws that the VA seem to pull out of a hat, and just uncalled for harassment. I have a brother-in-law that works for a law firm in NY. (Cahill, Gordon's, and Reindel) that, from what I have read, have been providing pro bono work for several years, by giving free legal information to the homeless, veterans, and victims of domestic violence. I am sure that all of these people would have no idea about who to turn to for help, if it were not for the help of the mentioned law firm. So I would just like to say thank you for these services, even before this became law on Jan. 01, 2015. I know my brother-in-law worked very hard in what he does, and I am proud of him for working for a law firm that goes the extra mile, for persons who are either too poor, or have no idea that these services are available to them. So thank you to Cahill, Gordon's, and Reindel, for going the extra mile.

Posted: Jan 12, 2015 11:13 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386759)

Chris Budgell said:

So the reaction from the lawyers is that any amount of training short of the full monty is not enough, yet self-represented litigants facing professional counsel are on a level playing field. Does the idiocy of that proposition never come up in law school?

Posted: Jan 13, 2015 07:42 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386807)

Displaced Legal Professional said:

Except for small claims court, etc., courts discourage pro se litigants. Maybe they discourage them because they want to ensure full protection and exercise of their rights. As a practical matter courts discourage pro se litigants because they don't want their decisions appealed on grounds of inadequate representation. Courts will often appoint counsel to stand by or paralegals to help them.

Don't forget, litigants have a right to counsel if they want it, but it is never compulsory or mandatory. Anyone can represent him/herself in court, but as the old saying goes, s/he who does has a fool for a client.

Posted: Jan 13, 2015 07:49 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386809)

Emjaycee said:

I don't see how a pro se litigant in a civil case can appeal on grounds of inadequate representation. Are there any cases on that?

I think the reason courts and judges prefer that litigants be represented is simply that dockets are crowded and it takes valuable court time explaining the law to them, and confused pro se litigants who don't know what they're doing slow down the proceedings.

Posted: Jan 15, 2015 03:46 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386851)

Displaced Legal Professional said:

I should have been more specific. My remark about pro se representation might apply more to criminal cases than to civil cases.

I appreciate your comment about representation in court. Pro se litigants may think they know the law regarding their claims, but they do not realize they have to follow rules of civil procedure, just as if they were represented.

Posted: Jan 15, 2015 09:29 am CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386856)

jdca67 said:

While I understand many new attorneys are having difficulty finding jobs in the market, it is due in part, to the economy. Legal expertise and representation is not cheap and there is no plausible "insurance" to help people defray the cost as we see in the medical arena. I believe this will be an evolving area and I welcome the advancement. Many of us are familiar with M.D.'s, P.A.-C's and ARNP's. An ARNP did not go to medical school but have the authority to practice medicine with no restrictions as does a M.D., but with less end-cost to the insurance companies and more importantly the customers. I know several ARNP's that are more qualified to practice medicine than some of the M.D.'s I know. It is about competency and the will to serve the people, especially the underserved.

Posted: Jan 15, 2015 05:32 pm CST
| Flag this comment for moderation (http://www.abajournal.com/report_abuse/?comment_id=386910)

Commenting is not available in this channel entry.

Narrowing the "Justice Gap": Roles for Nonlawyer Practitioners

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

JUNE 2013

NEW YORK CITY BAR ASSOCIATION
42 WEST 44TH STREET, NEW YORK, NY 10036

Table of Contents

**"Not everything that is faced can be changed,
but nothing can be changed until it is faced."
– James Baldwin**

I. Introduction

Each year more than 2.3 million low-income New Yorkers face the complexities of the State's civil justice system without access to even minimal professional assistance.[1] As a result, they often forfeit essential rights involving basic necessities of life – in stark contrast to the outcomes obtained by litigants who can afford to hire a lawyer or the small minority who receive pro bono assistance. This "justice gap" is a fundamental, long-term crisis in our legal system. It demands attention and action by the Bar.

Under the auspices of the Unified New York Court System, a Task Force to Expand Access to Civil Legal Services in New York ("the New York Task Force") has sought to develop responses to this crisis. In a November 2012 report to Chief Judge Jonathan Lippman, the New York Task Force recommended the establishment of a pilot project "that would test models of practice in which nonlawyers are entrusted to provide legal assistance, outside the courtroom, to individuals who are otherwise unrepresented." The report stated:

> In the Task Force's view, particularly given the level of nonlawyer assistance that is already being provided with limited or no oversight and regulation, further development of the role of nonlawyer advocates can be an important element in helping to address the substantial access-to-justice gap in the State. Based on its own consideration of these matters, ***the Task Force recommends the implementation of a pilot program to permit appropriately trained nonlawyer advocates to provide out-of-court assistance in a discrete substantive area***. Given the extent to which nonlawyer advocates and entities – such as housing counselors in the foreclosure area and credit counselors in the consumer credit area – are already providing help to low-income New Yorkers, the Task Force recommends that the pilot program be in an area such as housing assistance, consumer credit or, possibly, foreclosure.[2]

The report recommended further that the Chief Judge appoint an advisory committee to develop the pilot program and propose ways to expand the role of nonlawyers in the civil justice system.[3]

The Committee applauds this initiative. Indeed, expanding the role of nonlawyers has been a subject of discussion by the New York City Bar Association, and particularly by the Committee on Professional Responsibility, for almost two decades. In 1995, this Committee issued a report that endorsed the concept of increased reliance on nonlawyer assistance. In

---

[1] Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, Nov. 2010 ("*2010 Task Force Report*"), at 1, available at http://www.nycourts.gov/ip/access-civil-legal-services/.

[2] Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, Nov. 2012 ("*2012 Task Force Report*"), at 39 (emphasis added), available at http://www.nycourts.gov/ip/access-civil-legal-services/.

[3] *Id*. at 39.

Prohibitions on Nonlawyer Practice: An Overview and Preliminary Assessment, the Committee considered analogous developments in professions such as medicine and accounting and took note of evolving roles for nonlawyers in legal services programs and other legal settings. The Committee concluded by giving "preliminary endorsement to a deregulated licensing approach that permits greater nonlawyer practice in specified areas but establishes minimal requirements in order to protect the public while simultaneously increasing the availability of low-cost, accessible legal services to all."[4]

In revisiting the subject now, the Committee notes significant developments that have occurred since 1995. Medicine and other professions have continued to innovate by expanding the areas in which practitioners with lesser qualifications may provide specified services, at rates lower than those traditionally charged by more highly qualified practitioners. Moreover, even within the field of law, nonlawyers increasingly perform some of the services traditionally provided exclusively by lawyers. Nonlawyers already provide advice and even advocacy in certain judicial and administrative settings, in New York and other U.S. jurisdictions. Notable examples also have developed in England, Wales, and Canada, where nonlawyers now perform important roles both inside and outside the courtroom. The need to consider and adapt these experiences to appropriate situations in New York has never been more pressing, as low-income New Yorkers' access to essential legal services has only worsened over the years.

In light of these developments, the Committee today takes a fresh look at the possibility of expanding further the role of nonlawyers in limited respects. Whether the Committee's recommendations require amendments of current rules or statutes (such as the prohibition of the unauthorized practice of law) will depend on the specific nature and extent of any proposals that may be adopted. The line between providing information or administrative assistance on the one hand, and legal advice or advocacy on the other, may not always be clear, but the Committee sees an urgent need to examine the issue in various settings and to develop frameworks that would substantially increase the assistance available to unrepresented New Yorkers, at a cost they can afford. The Committee offers its recommendations provisionally, with the understanding that they may be reconsidered by the organized bar (including this Committee), the judiciary, and other interested parties in view of the results of the New York Task Force's pilot project, which will soon be launched.

In particular, the Committee offers these recommendations:

1. **Recognize a role for "courtroom aides" in judicial and administrative hearings.** This proposal would allow a nonlawyer in the role of "courtroom aide" to assist litigants in proceedings before selected courts and

---

[4] *Prohibitions on Nonlawyer Practice: An Overview and Preliminary Assessment*, 50 The Record 190, 209 (Jan. 1995). Similar conclusions were reached by an American Bar Association commission in a lengthy study published the same year. *See* ABA Comm'n on Nonlawyer Practice, *Nonlawyer Activity in Law-Related Situations* (Aug. 1995) ("*ABA Nonlawyer Study*"), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non_Lawyer_Activity.authcheckdam.pdf. More recently, the New York City Bar Association has called for "greater access to justice in civil cases for New Yorkers of low and moderate means," in a wide-ranging report issued in connection with New York's 2013 mayoral election. *Policy Recommendations for New York City's Next Mayor* at 39 (May 2013), available at http://www.nycbar.org/images/stories/pdfs/mayoralreport04302013.pdf.

agencies, subject to varying degrees of regulation and oversight. In some settings, friends or relatives should be allowed to provide moral support and other assistance without formal training or regulation, subject to approval and oversight by the presiding judge or administrator, as long as the nonlawyer does so without financial compensation. The Committee also suggests considering whether, in a more limited range of cases, it may be appropriate for nonlawyers to render assistance for a fee, subject to formal regulation regarding matters such as qualifications, mandatory disclosures, fee arrangements, and standards of conduct, in addition to on-the-scene supervision by the adjudicator. Nonlawyers already perform roles equivalent to that of a courtroom aide, in varying forms and on a paid or unpaid basis, in certain federal and state agency proceedings, in New York's Family Court, and in courts in England and Wales. This approach is a humane and modest step forward that should be extended beyond its current narrow applications. Nonlawyers serving this function are not expected to match the skill level of a lawyer, but can facilitate communication between the litigant and the tribunal, offer legitimate arguments that might otherwise be overlooked, and provide emotional support to litigants who may be thoroughly bewildered by judicial or administrative procedures.

2. Recognize a role for "legal technicians" outside judicial and administrative hearings. This concept has already been adopted by the Supreme Court of Washington State. Trained and licensed nonlawyers would be allowed to provide for a fee certain specified services – e.g., explaining procedures, gathering facts and documents, and assisting in the completion of court forms – but would not be allowed to participate in court hearings. In New York and elsewhere, such services (and more) already are provided in specialized settings by nonlawyers with varying levels of expertise. Creation of a regulatory regime that places undue burdens on those activities should be avoided. Nevertheless, the Committee sees value in establishing a legal framework that would attract more people to the field while ensuring the quality of the services provided. In some respects, this proposal also may require changes in existing law.

3. Study additional roles for nonlawyers. Given the profound severity of the justice gap, the Committee also recommends the study of broader roles for nonlawyers beyond the two modest proposals noted above. Further expansion of nonlawyers' roles rests on two basic premises: First, without additional reforms, the justice gap will continue to exist for millions of New Yorkers. Second, a number of currently unfulfilled tasks can be performed by someone without special training, or with a level of training below that of an attorney, subject to varying degrees of regulation and oversight. The study of broader roles for nonlawyers should focus on increasing consumer choice while providing appropriate safeguards against consumer confusion (including, for example, mandatory disclosures regarding the limitations of nonlawyer services). The Committee sees an urgent need to examine greater possibilities for providing nonlawyer assistance in selected settings. At this time, however, the Committee has decided not to adopt particular additional proposals.

The Committee makes these recommendations with the recognition that prior proposals to expand the role of nonlawyers have faced a range of objections. Some have asserted that nonlawyers will charge at least as much as lawyers, lack competence to handle legal matters, necessitate the creation of regulatory regimes that are doomed to fail, and more. This is a long-standing debate. Almost half a century ago, Justice William O. Douglas warned against labeling services as "legal" and reserving them for lawyers in situations where nonlawyers may be able to function just as capably:

> The so-called "legal" problem of the poor is often an unidentified strand in a complex of social, economic, psychological, and psychiatric problems. Identification of the "legal" problem at times is for the expert. But even a "lay" person can often perform that function and mark the path that leads to the school board, the school principal, the welfare agency, the Veterans Administration, the police review board, or the urban renewal agency.[5]

More than four decades later, the Supreme Court observed that nonlawyers such as social workers may adequately protect the interests of unrepresented litigants in at least some civil proceedings that are simple enough to render the assistance of an attorney unnecessary.[6] The Court's observation stands in tension with the traditional view that legal tasks are inherently too complicated for performance by nonlawyers, and by implication supports expanding the role of nonlawyer advocates in appropriate cases.[7]

The New York Task Force's pilot project provides a timely and important opportunity to study broader roles for nonlawyers in real-world circumstances, to test legitimate concerns that may be raised, and, if necessary, to consider a change of course or provide additional protections. The Committee looks forward to reviewing the results of the pilot project. At the same time, the Committee believes that it should move forward with its own recommendations in view of the growing severity of the justice gap and the need to promote a broad-based discussion of solutions within New York's organized bar.

II. The Justice Gap

A. The Need Is Extreme

For the past three years, the New York Task Force has issued annual reports that studied low-income New Yorkers' access to legal assistance in civil cases. Each year the Task Force has found a continuing and growing crisis. Without legal assistance, millions of people in our State

---

[5] *Hackin v. Arizona*, 389 U.S. 143, 148 (1967) (dissenting opinion, Douglas, J.).

[6] *Turner v. Rogers*, 131 S. Ct. 2507, 2519-20 (2011). The Court in *Turner* rejected a broad due process right to counsel in certain civil contempt proceedings. In doing so, it cited *Vitek v. Jones*, 445 U.S. 480, 499-500 (1980) (Powell, J., concurring), which pointed out that a mental health professional rather than an attorney could provide necessary assistance to an inmate threatened with involuntary transfer to a state mental hospital.

[7] For a discussion of *Turner*'s potential implications (after oral argument but before decision), see http://www.concurringopinions.com/?s=tribe+rogers.

face "losing the roof over their heads, suffering the breakup of their families, or having their very livelihood threatened."[8]

In 2010, the Task Force reported that more than 2.3 million New Yorkers lacked legal assistance in potentially life-altering civil cases. Unassisted litigants included:

- 99% of tenants in eviction cases in New York City and 98% of tenants in New York State;
- 99% of borrowers in consumer credit cases in New York City (nearly a quarter million of which are filed annually);
- 97% of parents in child support proceedings in New York City and 95% of parents in New York State;
- 44% of homeowners in foreclosure cases in New York State.[9]

These four categories alone – landlord-tenant, consumer credit, family law, and foreclosure actions – represent 70% of the caseload pending on New York State dockets.[10]

In 2011, the Task Force found that the crisis was continuing throughout the State:

> This year, the Task Force has concluded that the key findings of the Task Force's legal needs study have not changed. Indeed, the continuing high rates of poverty in New York State validate those findings. . . . [D]ata indicates that 1.2 million low-income New Yorkers had three or more legal problems over the course of the year and thereby experienced the most pressing need for civil legal help. . . . [In such cases,] at best, 20 percent of the need for civil legal services is being met.[11]

In 2012, the Task Force reaffirmed its previous findings in light of more recent data, noting again that no more than 20% "of the legal needs of low-income New Yorkers involving the essentials of life are being met."[12]

The Task Force's findings are supported by a wealth of data from a variety of sources. For example, in testimony presented to the Task Force in 2010, the Legal Aid Society stated that, because of a lack of resources, it was "able to help only one out of every nine New Yorkers who seek [the Society's] help with civil legal problems."[13] Among many other examples of the problem, the Society noted that since the economic downturn began in 2008, it had seen "a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage," and "a stunning 800% increase in requests for foreclosure defense

---

8 *2010 Task Force Report*, at 7.

9 *Id.* at 1, 16.

10 *Id.* at 16.

11 Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, Nov. 2011 ("*2011 Task Force Report*"), at 15 (capitalization omitted), available at http://www.nycourts.gov/ip/access-civil-legal-services/.

12 *2012 Task Force Report*, at 14.

13 Testimony of the Legal Aid Society on the Impact of the Unmet Civil Legal Services Needs Throughout the State, First Dep't Hearing, Sept. 28, 2010, at 3, available at http://www.legal-aid.org/media/139139/testimony092810clshearing.pdf.

assistance."[14]

Similarly, the Legal Services Corporation examined data from across the country in 2009 and found that at least 50% of eligible individuals seeking assistance from the Corporation's recipient programs were turned away each year because the programs lacked sufficient resources.[15] Data compiled by the Corporation's New York State recipient programs (outside New York City) showed that this national problem was mirrored locally. In 2009 alone, for example, the New York programs were forced to turn away approximately 100,000 people seeking help.[16]

These problems are long-standing and structural. They cannot be attributed solely to the recent recession, nor can they be expected to disappear as the economy recovers. Studies have shown a consistently wide justice gap for at least the past quarter century. In the late 1980's, for example, data indicated that 70-80% of low-income Americans were unable to obtain necessary legal assistance, and 86% or more of low-income New Yorkers had unmet legal needs.[17] Those numbers have persisted, or even worsened, over the last 25 years. Effective action is long overdue.

B. Current Efforts By the Legal Profession Are Valuable and Deserve Support, But Much More Is Needed

New York's courts, lawyers, and law schools are making substantial efforts to narrow the justice gap. Those efforts are laudable, but the Committee recognizes – along with the New York Task Force and other observers – that much more must be done. We briefly note some of the legal profession's current efforts here.

1. Pro bono efforts by the private bar

Pro bono work performed by experienced lawyers is critically important and, in many cases, literally life-saving. The Committee applauds that work and those who perform it. In its 2012 Report, the Task Force recommended measures to increase pro bono work and monetary contributions by New York lawyers, including a biennial pro bono reporting requirement for the private bar.[18]

In addition, under a recently adopted rule, New York bar applicants must now complete 50 hours of pro bono service.[19] The new rule will likely increase the amount of service provided

---

[14] *Id*.

[15] Legal Services Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low Income Americans* 2-3 (Sept. 2009), available at http://www.lsc.gov/media/reports/.

[16] Empire Justice Center, *Turned Away: A Snapshot of New York's Justice Gap*, available at http://www.empirejustice.org/policy-advocacy/legislative-updates/turned-away-a-snapshot-of.html.

[17] See data cited in *ABA Nonlawyer Study* at 77 & Appendix E ("Legal Needs Studies from 1985-1995") at E-2.

[18] *2012 Task Force Report*, at 32.

[19] Advisory Committee on New York State Pro Bono Bar Admission Requirements, *Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments* (Sept. 2012), at 1, available at http://www.nycourts.gov/attorneys/probono/.

by law students and recent law graduates who are not yet admitted to the bar. Nevertheless, any foreseeable increase in pro bono work – by bar applicants or by experienced lawyers – is unlikely to close the justice gap.

2. The civil legal aid bar

The civil legal aid bar provides crucial assistance to individuals both in and out of court. The bar's efforts also have a salutary impact on the culture of our courts and the legal profession generally. A network of civil legal aid programs receives funds appropriated by Congress and distributed by the Legal Services Corporation, as well as funds from state, local, and private sources. Programs in New York include the Legal Aid Society and Legal Services for New York City, among many others.

As noted above, however, civil legal aid programs can reach only a minority of those who urgently need their services. Our nation's failure to commit adequate financial and other resources reflects a lack of political will but may also stem from a basic limitation of our legal system. Although the right to counsel in criminal cases has been recognized broadly under federal and state constitutions, no corresponding right has been recognized in civil cases, even though many civil matters – landlord-tenant, foreclosure, debt collection, and other cases – may entail life-changing consequences comparable to the effects of criminal proceedings.[20] Indeed, even in the criminal context, the right to counsel often is ineffective due to a lack of resources. Our society has not yet made the necessary commitments to provide appropriate legal assistance in either civil or criminal cases.[21]

3. Court facilities

Courthouse personnel and facilities provide important assistance to unrepresented litigants. Clerks' offices, court forms on websites, and courthouse help desks furnish basic information, but they cannot provide individualized advice, much less in-court representation. The limitations are evident. Many litigants, for example, may be unable to read and understand even simplified court forms, and the utility of standardized forms often diminishes in the later phases of litigation, when an advocate's skills and judgment typically are most useful.

In addition, judges themselves have sought to provide greater assistance to unrepresented individuals in their courtrooms. In recent years, New York has become a national leader in encouraging judges to take a more active role in ensuring that pro se litigants have a basic understanding of the proceedings and are treated fairly at hearings. But here, too, the limitations are evident. Judges cannot abandon their neutrality in an effort to mitigate the often gross disparities in knowledge and expertise between unrepresented individuals and their represented opponents. The disparities can be narrowed substantially only if pro se litigants have access to someone who can take their side and legitimately promote their interests.

---

[20] *See, e.g., Turner v. Rogers, supra* (rejecting a constitutional right to counsel in certain civil contempt proceedings).

[21] *See generally* D. Cantrell, *The Obligation of Legal Aid Lawyers To Champion Practice by Nonlawyers*, 73 Fordham L. Rev. 883 (2004) (noting that the legal services bar has called for abolition of "unauthorized practice of law" restrictions).

4. Law school developments

In a step that may expand access to lower-cost legal services, Arizona recently adopted a rule that allows law students to take the bar examination before completing three full years of law school.[22] Prof. Samuel Estreicher of New York University Law School, a leading advocate of this approach, argues that it will "reduce the cost of legal education for many and enable them to pursue lower-paying careers in the public service, if they are so inclined or situated."[23]

In addition, law schools in New York and elsewhere have begun "incubator" programs to help recent law graduates establish small firm practices aimed at responding to the justice gap. Indeed, some schools are creating their own law firms for such purposes.[24] Yet even if these efforts take root and flourish, the new firms will reach only a small number of unrepresented individuals in the foreseeable future.

5. Unbundled legal services

New York's Rules of Professional Conduct permit the "unbundling" of legal services – that is, arrangements in which a lawyer performs some, but not all, of the work involved in traditional full-service representation, while clients undertake the remaining work themselves.[25] Among other things, this approach encourages attorneys to perform discrete tasks at lower cost, without the need to commit to comprehensive or long-term representation.

The "unbundling" concept has been endorsed by the American Bar Association as well. An ABA study recognized the concept as a method of providing low-cost services almost 20 years ago.[26] In February 2013, the ABA resolved to "encourage practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services."[27] The ABA's accompanying report explains:

> Research clearly indicates that a growing number of people are foregoing the assistance of lawyers when confronted with a civil legal issue and are addressing their matters through self-representation. In many instances, people are turning to self-help alternatives, such as document preparation services available over the

---

[22] Order amending Ariz. Sup. Ct. Rule 34 (Dec. 10, 2012), available at http://www.azcourts.gov/Portals/20/2012Rules/120512/R120002.pdf/.

[23] S. Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 Legis. & Pub. Policy 599, 611 (2012); *see also* D. Rodriguez & S. Estreicher, "Make Law Schools Earn a Third Year," *New York Times*, Jan. 18, 2013, at A27 (New York ed.), available at http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html.

[24] *See, e.g.*, E. Bronner, "To Place Graduates, Law Schools Are Opening Firms," *New York Times*, March 14, 2013, at A14 (New York ed.), available at http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html?hpw&_r=0.

[25] Rule 1.2(c) of the New York Rules of Professional Conduct provides: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel."

[26] *See ABA Nonlawyer Study* at 85-88.

[27] *See* ABA Resolution, adopted Feb. 11, 2013, available at http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2013_hod_midyear_meeting_108.authcheckdam.docx.

Internet.

> Lawyers who provide some of their services in a limited scope manner facilitate greater access to competent legal services. Limited scope representation has taken on several names, including "discrete task representation," "limited assistance representation," and "unbundled legal services."
>
> To be clear, limited scope representation is used in pro bono and legal aid settings, but is not limited to free legal services. Lawyers who unbundle their services in the marketplace are able to serve a broader range of clients because the cost per case is more affordable.[28]

Like some other innovations, "unbundling" may allow lawyers to provide services at more affordable costs. The Committee believes, however, that adequate responses to the justice gap must include innovations that significantly expand the services provided by nonlawyers.

III. Nonlawyers Can Play a Potentially Crucial Role in Responding to the Justice Gap

A. Legal Scholars Have Shown That New Models of Representation Are Necessary and Practical

This Committee's 1995 report recognized that nonlawyer services offer potentially significant benefits for unrepresented persons. In the intervening years, other voices have likewise called for serious consideration of new models of representation. The calls have come from many sectors of the profession, including scholars whose work has done much to promote recent court initiatives. We highlight some of that work here.

One of the leading voices for reform is Gillian K. Hadfield, professor of law and economics at the University of Southern California. In testimony prominently featured in the New York Task Force's 2012 Report, she argued forcefully for expanding the role of nonlawyers as a means to address the justice gap, pointing to the medical profession as a useful analogy:

> Does a full fledged MD have to deliver every service needed to address every medical issue you face in order to receive quality care? No. Medical care is a team sport, provided by a wide variety of medical professionals: nurses, radiologic technologists, pharmacists, nurse practitioners, physical therapists, chiropractors, registered massage therapists, certified nurse midwives, certified registered nurse anesthetists, etc. Many of these providers are licensed and authorized to provide services directly to those with medical problems. They are not limited to working under the direct supervision of MDs. Thank goodness. Because if they were, we'd be paying MD rates for every sore throat and backache.[29]

Prof. Hadfield also noted that the role of nonlawyers has dramatically expanded in countries with legal systems closely related to ours: "The United Kingdom, for example, has a

---

[28] *Id*., Report at 1.

[29] *2012 Task Force Report*, at 38.

long history of allowing a wide variety of differently trained individuals and organizations to provide legal assistance. And fortunately some very fine legal scholars have studied how well this works. Their key finding: it works very well. . . ."[30]

Likewise, Prof. Laurel Rigertas at Northern Illinois University Law School cites the medical profession as a model and calls for a similar "stratification" of legal roles:

> [S]tratification would involve the training, education and licensure of professionals – other than lawyers – to provide some legal services. For example, a one-year program that focused on housing law could lead to a limited license as a housing advocate. This might be an effective way for the private marketplace to provide affordable legal services in areas of high consumer demand while protecting consumers from incompetent services.[31]

Prof. Renee Knake at Michigan State University Law School has offered additional arguments for new models of representation, with an emphasis on possible market solutions.[32] Although corporate ownership of legal practices remains prohibited in the United States, Prof. Knake suggests that allowing such ownership could channel substantial economic resources into serving the unmet needs of a large portion of the population, particularly through retail outlets. She notes, for example, that Wal-Mart aims to serve an estimated 30 million households that never or rarely use bank accounts – the very same households that could benefit from, but are least likely to have access to, affordable legal representation.[33]

Other scholars emphasize that although specific arrangements may vary, broadening the role of nonlawyers is inevitable and necessary. Prof. Herbert Kritzer at the University of Minnesota Law School argues that expanding the role of "those who do not possess the full credentials of a legal professional has the potential of greatly widening access to legal services."[34] Initially, he suggests, this will occur as a broader array of standardized services are "offered through firms headed by lawyers but with services actually provided by specialized nonlawyers" at lower cost. At later stages, "[a]s the standardized services become increasingly accepted, legal services firms would not necessarily require the employment of any lawyers."[35]

B. Nonlawyers May Be Capable of Performing Certain Legal Tasks in Appropriate Circumstances

Much of the scholarly work described above rests on a basic observation: some of the tasks involved in assisting low-income individuals are relatively simple and, in appropriate circumstances, could be performed effectively by nonlawyers with some degree of training, or

---

30 *Id*. at 39.

31 L. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, ABA J. of Prof. Lawyer 79, 106 (2012).

32 R. Knake, *Democratizing the Delivery of Legal Services*, 73 Ohio St. L.J. 1 (2012).

33 *Id*. at 7.

34 H. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 Law & Society Rev. 713, 743 (1999), available at http://users.polisci.wisc.edu/kritzer/research/legalprof/postprof.htm.

35 *Id*.; *see also* Cantrell, *supra* note 21, at 886-88.

even by untrained but intelligent laypersons. This observation applies in a variety of contexts, including litigation. As Prof. Deborah Rhode of Stanford Law School has pointed out, nonlawyers can play increased roles as courts continue to streamline proceedings in the types of cases that most frequently involve pro se litigants.[36]

New York is a leader in the effort to simplify such proceedings. For example, the New York State Courts Access to Justice Program has developed technologies called "Advocate Document Assembly Programs" for collecting court forms and providing "advocates with a much faster method of interviewing a litigant and producing court papers." The expectation is that "a trained advocate will assist the litigant through the process and will be available to ensure that a prima facie pleading is produced and terms and concepts are explained."[37]

More exploration is needed to determine which tasks of potential benefit to unrepresented individuals could be performed effectively by nonlawyers, which types of cases would be appropriate for such services, and what forms of training, regulation, or other forms of oversight would be needed. Consider, for example, the tasks that might be helpful to persons in debt collection or eviction proceedings:

- explain how representation by an attorney differs from assistance by a nonlawyer, and how both differ from proceeding pro se;
- explain the complaint and other legal filings;
- explain court procedures and what the litigant is required to do next;
- assemble necessary facts and documents;
- help the litigant obtain, complete, and file required court forms;
- help organize statements, questions, and documents the litigant wants to present in court;
- advise the litigant with regard to preserving documents, communicating by certified or registered mail, making notes of relevant phone calls or other communications, etc.;
- advise the litigant with regard to appropriate dress and comportment in court;
- remind the litigant of court dates, and accompany him or her to the courthouse to provide moral and emotional support.

---

[36] D. Rhode, *Whatever Happened to Access to Justice?*, 42 Loy. L.A. L. Rev. 869, 885-86 (2009), available at http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2670&context=llr..

[37] New York State Courts Access to Justice Program, 2012 Report, at 34, available at http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2012report.pdf.

We consider now some examples of how these and similar tasks are already being performed by nonlawyers in certain judicial and administrative settings.

IV. Nonlawyers Already Provide Legal Services in Limited Circumstances

In evaluating models for expanding the role of nonlawyers, it is useful to consider the range of services that nonlawyers already are authorized to perform in various circumstances. Such services fall into three broad categories:

- providing legal information outside court or agency proceedings;
- providing moral support inside court or agency hearing rooms; and
- providing legal advice (not just information) and actual representation in some court and agency proceedings.

Nonlawyers also operate in a variety of employment capacities, including:

- as an employee of a nonprofit social services agency or legal services organization, which does not charge a fee and provides attorney supervision;
- as an employee of a law firm, which charges a fee and provides attorney supervision;
- as an employee of a nonlawyer firm, which charges a fee and does not provide attorney supervision;
- as an independent service provider, who may or may not charge a fee and does not work under attorney supervision.

A. Court Proceedings

1. Landlord-tenant

Each year millions of New Yorkers are involved in landlord-tenant proceedings. In New York City, cases are heard in the Housing Part of Civil Court; in 99% of those cases, the tenants lack counsel.[38] Elsewhere in the State, cases are heard in civil courts, town and village courts, county courts, and district courts; in 98% of those cases, the tenants lack counsel.[39]

Some limited sources of nonlawyer assistance are available in landlord-tenant cases:

- ***Housing Court help desks.*** Housing Court Answers, a nonprofit organization, operates help desks within New York City's Housing Court.

[38] *2010 Task Force Report*, at 1.

[39] *Id.*

The desks are staffed by nonlawyers who provide information about the Court's proceedings, explaining, for example, the roles of various court personnel and identifying possible sources of additional assistance.

- ***Court-sponsored courses.*** Some courts offer courses to the public, taught by nonlawyer staff, regarding basic matters such as defenses to non-payment proceedings and nuisance holdovers, proceedings to obtain repairs, and information about public benefits and housing rights.

- ***Student volunteers.*** Law students and undergraduates from participating schools can volunteer to assist pro se tenants and landlords in nonpayment proceedings through the New York City Civil Court's Resolution Assistance Program (RAP). RAP assistants provide support in hallway negotiations concerning parties' claims or defenses, encourage parties to discuss settlement with the court where appropriate, and provide information regarding sources of legal and other assistance. RAP assistants may not provide legal advice or participate in actual negotiations or settlement conferences. RAP assistants must attend a brief training course and commit to providing a minimum of six hours of service per year.[40]

- ***Guardians ad litem ("GAL's").*** Nonlawyer volunteers may advocate on behalf of mentally or physically impaired litigants facing eviction through the New York City Civil Court's Housing Court Guardian Ad Litem Program. GAL's make court appearances, negotiate settlements between tenants and landlords, obtain help for litigants from social services agencies, and provide other assistance. GAL's do not have the legal authority to manage personal affairs. Candidates must submit background information, provide professional references, and complete a training course. Once accepted, they are placed on a list of available GAL's circulated to the court's supervising judges for appointment in individual cases. Volunteers commit to serving a minimum of three appointments over the course of one year.[41] In some instances, GAL's receive compensation by the Human Resources Administration.[42]

2. Foreclosure

In residential foreclosure actions, over 75% of the defendants in New York City and over 66% in New York State are unrepresented.[43] By contrast, the plaintiffs in such actions are typically sophisticated lenders with highly experienced counsel. Many proceedings are

---

[40] New York City Housing Court, Prospective RAP Assistants, available at http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml.

[41] Guardian Ad Litem Program – NYC Civil Court, Housing Part, available at http://www.nycourts.gov/ip/nya2j/diverseneeds/GAL.shtml.

[42] *See 2012 Task Force Report*, Appendix 17, at 19-20.

[43] 2011 Report of the Chief Administrator of the Courts, at 5, available at http://www.nycourts.gov/publications/pdfs/ForeclosuresReportNov2011.pdf.

complicated and involve numerous potential defenses and counterclaims, which unrepresented litigants often lack the ability to understand, much less assert. In addition, settlement conferences are mandatory and often involve a lengthy process of four to eight sessions.

Sources of nonlawyer assistance in such cases include:

- ***Nonprofit counseling agencies.*** The U.S. Department of Housing and Urban Development certifies nonprofit counseling agencies to provide borrowers with specialized assistance in foreclosure cases. Among other things, nonlawyer counselors working for certified agencies explain the settlement process, help assemble documents, seek accommodations such as extensions of time and loan modifications, prepare loan modification papers, and arrange short sales. They are not authorized to provide legal or tax advice, and do not appear in court. The program is funded with assistance from the Office of the New York Attorney General.

- ***Nonprofit legal services agencies.*** Free assistance is also available from nonlawyers at legal services organizations, operating under attorney supervision. The nonlawyers cannot provide legal advice but can explain the foreclosure process and help prepare loan modification applications or a pro se answer.

- ***For-profit counseling businesses.*** Companies operating for profit may offer similar assistance – particularly loan modification services – for a fee, but are prohibited from collecting fees in advance

3. Consumer credit

In 2009, over 240,000 debt collection cases were filed in New York City Civil Court.[44] In 99% of those cases, the debtors were unrepresented, while 100% of creditors had legal counsel.[45] Indeed, creditors typically are represented by a cadre of highly experienced law firms.[46] The disparity in expertise is reflected by a striking imbalance in outcomes. It has been found that 80% of these cases result in default judgments.[47]

When default judgments are entered, creditors' submissions are often legally inadequate but go unopposed because debtors lack the basic knowledge to evaluate and challenge them.[48] In

---

[44] *2010 Task Force Report*, at 16.

[45] *Id.* at 1, 16.

[46] *See* Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor*, at 1 (Oct. 2007) (cited hereafter as *Debt Weight*), available at http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf.

[47] *Id.* at 1, 9.

[48] *Id*. at 9-10; *see also Pavlov v. Debt Resolvers USA, Inc.*, 28 Misc. 3d 1061, 1076, 907 N.Y.S.2d 798, 810 (N.Y. Civ. Ct., Richmond Cty. 2010) (the "vast majority" of consumer debt cases in New York City Civil Court result in default judgments against defendants; only about 30% of defendants appear and answer, and the "vast majority" of those are unrepresented).

other cases, pro se debtors appear but fail to recognize and assert valid defenses.[49] In many such cases, debtors may forego legal representation because the cost of hiring a lawyer exceeds the amount in issue. Yet an adverse judgment can have devastating effects on a low-income debtor. The judgment creditor can garnish wages and freeze bank accounts, crippling the debtor's ability to pay for basic needs such as food, rent, utilities, and medical care. The resulting negative credit record may impair the debtor's long-term ability to find work and housing.

New York expressly bars nonlawyers from providing certain types of services to debtors except on a pro bono basis. In particular, for-profit businesses are prohibited from offering "budget planning services," which involve the distribution of a debtor's funds to creditors.[50] The prohibition stems from the long history of fraud and abuse associated with businesses that purport to provide debt negotiation and credit counseling.[51] A report issued recently by the New York City Bar Association's Civil Court Committee and Consumer Affairs Committee formally opposed a proposal to relax New York's prohibition.[52] The report supports a broad ban on "any debt relief service – whether debt settlement, debt negotiation (otherwise known as debt management), or credit counseling – for a fee that is more than nominal."[53]

Debtors may still obtain limited assistance from nonlawyers, particularly from these sources:

- ***Law school and college students, acting under attorney supervision.*** Debtors may obtain free legal information and advice from the Civil Legal Advice and Resource Office ("CLARO"), which operates under the auspices of the New York State Unified Court System's Access to Justice Program. CLARO runs court-based, walk-in clinics in all five boroughs of New York City. The clinics are staffed by law school and college students who are supervised by volunteer attorneys. CLARO typically deals with non-bankruptcy cases involving credit card debt, medical debt, student loans, car loans, and utilities. Staffers explain the court process, educate debtors on what to expect at their court hearings, and help draft court filings such as answers and motions to open default judgments. They do not represent debtors in court.

- ***Civil Court clerks.*** New York City Civil Court clerks may help debtors answer a complaint by assisting them in completing a pre-printed form (the "Consumer Credit Transaction Answer in Person"), which provides a list of defenses. The clerk fills out the form based on information

---

[49] *Debt Weight* at 1.

[50] N.Y. Gen. Bus. Law § 455.

[51] *See, e.g.*, New York City Bar Ass'n, *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry* (May 2012), available at http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf

[52] New York City Bar Ass'n, *Report on Legislation by the Civil Court Committee and Consumer Affairs Committee*, available at http://www2.nycbar.org/pdf/report/uploads/BudgetplanningConsumerCivilCtReportFINAL6.17.11.pdf.

[53] *Id*. at 4.

provided by the debtor, sends the answer to the plaintiff, and advises the debtor of the hearing date. In addition, the Court's website provides litigants with information regarding defenses and counterclaims, definitions, and explanations of procedure.[54]

4. Family courts

New York's Family Court and State Supreme Court address a wide spectrum of family law matters, including divorce, child and spousal support, child custody, abuse and neglect charges, termination of parental rights, guardianship, placement, and delinquency. At least 80% of family law cases involve one or more pro se parties. In many cases, a pro se party faces a represented opponent.[55]

Sources of nonlawyer assistance include:

- ***Family Court clerks.*** Court clerks help pro se litigants fill out paperwork, such as the petition necessary to obtain an order of protection.

- ***Court-appointed special advocates/assistants (CASAs).*** CASAs are appointed by Family Court judges to serve as advocates for abused, neglected, or at-risk children.[56] All CASAs receive at least 30 hours of training, take an oath to uphold the best interests of the children, and are sworn in by the Family Court. They function as "friends of the court," attending all court hearings and certain other proceedings, monitoring court orders, and reporting directly to the court. CASAs are supervised by the CASA program's directors or volunteer coordinators, and attorney supervision is not required.

- ***Friends and relatives.*** New York's Family Court Act provides that "[u]nless the court shall find it undesirable," a petitioner may bring a non-witness friend, relative, counselor, or social worker to the courtroom. Such a person has no right to participate in the proceedings, but the court may call him or her as a witness.[57]

5. Tribal courts

Some Native American tribal courts allow nonlawyer advocates, called "lay counselors," to perform all of the functions of a professional attorney in both civil and criminal proceedings. In the tribal courts of the Ute Indian Tribe, for example, any party in any proceeding may choose to be represented by a lay counselor instead of a professional attorney.[58]

---

54 *See, e.g.*, http://www.courts.state.ny.us/COURTS/nyc/civil/procedural.shtml.

55 *See 2012 Task Force Report,* Appendix 17, at 21.

56 *See* http://www.courts.state.ny.us/ip/casa/publications/Chapter1-TheCASAProgramInNYS.pdf.

57 N.Y. Family Court Act § 838.

58 Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation § 1-5-1 *et seq*., available at http://www.narf.org/nill/Codes/uteuocode/utebodytt1.htm.

The Tribe's Law and Order Code effectively places lay counselors on the same footing as professional attorneys, although no special training or certification appears to be required for lay counselors. When acting as representatives, lay counselors:

- bear "the same ethical obligations of honesty and confidentiality" as professional attorneys;
- are subject to the same attorney-client privilege, which attaches "in appropriate circumstances";
- are "deemed officers of the Court" and governed by the same disciplinary rules as professional attorneys, including "the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association";
- like professional attorneys, may be required to represent "without compensation or without full compensation" persons who are deemed by a Tribal Court judge to have "a particularly urgent need for such representation but are personally unable to afford to pay for such legal help."[59]

Similar provisions can be found in other Native American tribal codes. Some codes, however, require that lay counselors pass a "bar examination" (administered by a tribal executive board) or a "certified paralegal training program."[60]

B. Administrative Proceedings

Some federal and New York State agencies allow nonlawyers to represent clients in administrative proceedings, and in some cases allow the nonlawyers to charge fees. In federal Social Security proceedings, for example, nonlawyers may be compensated from a claimant's award of retroactive benefits; and in immigration cases, firms employing nonlawyers may charge a nominal fee for their services. Nonlawyers may also appear in state unemployment and workers' compensation proceedings. The federal and state agencies impose various regulatory requirements on nonlawyers who practice before them. Often these include minimum requirements of education, training, and experience; a showing of good moral character; insurance or bonding requirements; disciplinary procedures; and fee limitations.

1. Social Security benefits

[59] *Id*. §§ 1-5-1, 1-5-6; *see also id*. § 1-5-7 (identical oath prescribed for attorneys and lay counselors upon admission).

[60] *See, e.g.*, Assiniboine & Sioux Tribes Fort Peck Tribal Code § 501(b) (bar examination), available at http://www.indianlaw.mt.gov/fortpeck/codes/default.mcpx; Winnebago Tribal Code §§ 1-402, 1-403 (certified paralegal training program), available at http://www.winnebagotribe.com/images/tribal_court/2012%20WTN%20TRIBAL%20CODE.pdf.

The Social Security Administration allows nonlawyers to represent claimants seeking Social Security disability insurance benefits. A relative, friend, or "other spokesman" may serve in that capacity,[61] provided that he or she "is generally known to have a good character and reputation," is "capable of giving valuable help" in connection with the claim, and is not disqualified or legally prohibited from doing so.[62]

Additional requirements apply to nonlawyer representatives who seek compensation for their services. In such cases, the nonlawyer must (1) have a bachelor's degree from an accredited institution, or at least four years of relevant professional experience and either a high school diploma or GED certificate; (2) pass a written examination regarding relevant Social Security Act provisions and recent court decisions; (3) maintain professional liability insurance of at least $500,000; (4) pass a criminal background check; and (5) meet continuing education requirements.[63] If the claimant is successful, the agency is authorized to withhold up to 25% of the past-due benefits awarded or $4,000 (whichever is less) as payment for the nonlawyer's services, subject to certain other requirements.[64]

2. Immigration

Immigration decisions are made in the first instance by the U.S. Citizenship and Immigration Services ("USCIS"), which reviews applications for visas, green cards, and asylum. The application process requires knowledge of immigration law and procedures (which are complex and subject to frequent change), factual development, and pursuit of a Freedom of Information Act request to discover the applicant's history of interaction with the government. Initial decisions are based on written submissions and in some cases an interview.

Applicants denied relief at the USCIS level may be subject to deportation or removal. The next stage involves Immigration Court proceedings conducted by the Department of Justice's Executive Office for Immigration Review. Matters may also reach that level if a noncitizen is arrested and detained upon discovery of unlawful status. Immigration Court decisions are subject to review by the Board of Immigration Appeals, and its decisions in turn are subject to review by the U.S. Court of Appeals.

Many individuals lack representation in Immigration Court proceedings. One recent study showed that 67% of detained individuals were unrepresented in New York removal proceedings. Moreover, even where individuals are represented, the quality of representation is often considered inadequate by the presiding judges.[65]

Nonlawyers may play limited but important roles in immigration cases:

---

61 45 C.F.R. § 205.10(a)(3)(iii).

62 20 C.F.R. § 404.1705.

63 76 Fed. Reg. 45184, 45186-89 (July 28, 2011), available at http://www.gpo.gov/fdsys/pkg/FR-2011-07-28/pdf/2011-19026.pdf.

64 42 U.S.C. § 406.

65 *See* "Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings," 33 Cardozo L. Rev. 357, 367-68 (2011), available at http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf.

- ***Accredited representatives of recognized nonprofit organizations.*** "Accredited representatives" of a "recognized" nonprofit organization may participate in Immigration Court proceedings to the same extent as attorneys. However, the organization may charge only a "nominal" fee for its services, and must demonstrate that its "knowledge, information and experience" are adequate to provide appropriate representation. There is no requirement that the organization employ a supervisory attorney, although many authorized organizations with adequate funding do. Examples of such organizations in New York City include Catholic Charities, CUNY Citizenship NOW, and Sanctuaries for Families.[66]

- ***"Other qualified representatives," including "reputable individuals."*** Federal regulations also permit other categories of nonlawyers to provide representation in immigration cases. These include law graduates who are not yet admitted to the bar and law students, under specified conditions. Another category consists of "reputable individuals" who are "of good moral character"; appear on an "individual case basis" at the noncitizen's request; receive no compensation; and have a pre-existing relationship with the noncitizen (for example, as a relative or friend), although the last requirement may be waived "where adequate representation" is otherwise unavailable.[67]

The Committee notes that, in contrast to these legitimate representatives, so-called "notarios" and "travel agents/translators" in minority communities often victimize immigrants through the unauthorized practice of law and other forms of misconduct. The unauthorized services include, for example, the selection, preparation, and submission of USCIS forms. In many cases, the nonlawyers charge more than immigration lawyers for similar services. Although efforts to eliminate the abuses have been made, more needs to be done.[68]

3. Unemployment insurance benefits

New York State's Unemployment Insurance Appeals Board allows nonlawyers to serve as "registered representatives" of claimants seeking unemployment insurance benefits. At Board hearings, registered representatives are authorized to present a claimant's case, introduce

---

[66] The Department of Justice lists recognized organizations and accredited representatives at http://www.justice.gov/eoir/statspub/raroster.htm.

[67] *See* 8 C.F.R. § 292.1.

[68] *See, e.g.*, Cantrell, *supra* note 21, at 893. In an effort to protect immigrants in this context, New York City's Local Law 31 attempts to regulate – but does not license or certify – nonlawyers who provide "immigration assistance services" for profit. *See* N.Y.C. Admin. Code §§ 20-770 to 20-780. Whether the regulation is effective in preventing fraud or ensuring adequate representation is open to question. *See generally* C. Shannon, "To License or Not to License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers," 33 Cardozo L. Rev. 437, 457-65 (2011).

documentary evidence, cross-examine opposing parties and their witnesses, and give a closing summation.[69]

To qualify as a registered representative, a nonlawyer must (1) have a high school diploma or its equivalent; (2) have at least 16 hours of work experience or have taken courses in specified areas (administrative law and procedure, labor law, unemployment insurance, or civil practice and procedure); and (3) be of good moral character. In addition, the applicant "may" have to pass an examination, and "should have some experience with hearings and a working knowledge" of Article 18 of New York's Labor Law and the Board's rules and recent decisions.[70] As part of the application process, a nonlawyer must submit a detailed resume and five references, must indicate whether he or she intends to engage full-time in representing claimants for a fee, must be interviewed by the Board, and upon certification must obtain a surety bond of $500.[71]

The Board maintains a list of registered representatives and their contact information, which is supplied to claimants and available online. Registered representatives may charge a fee only if their client has won an award. Payments are limited to $75 per hour for nonlawyers ($100 per hour for lawyers). The representative must present a detailed certification of the services performed. The Board then approves a fee based on the total benefit to the claimant, the time spent on the representation, the legal and factual complexities of the case, and any other factors the Board deems relevant.[72]

4. Workers' compensation benefits

The New York State Workers' Compensation Board authorizes nonlawyers to practice before the Board, subject to a licensing requirement.[73] To qualify for a license, an applicant must be at least 18 years old and a U.S. citizen or lawful permanent resident, have a high school diploma or its equivalent, reside or have a regular place of business in New York State, be of good moral character, and have "competent knowledge of the law and regulations relating to workers' compensation matters and the necessary qualifications to render service to his or her client."[74] The nonlawyer must also pass a written examination, submit to possible "oral review at the Board's discretion," and participate in an orientation program covering Board procedures and the legal and ethical responsibilities of practitioners.[75]

---

[69] Fact Sheet, New York State Unemployment Insurance Appeal Board, available at http://www.labor.ny.gov/sites/ui-appeal/pdf/RegisteredRepresentativeFactSheet.pdf.

[70] *Id*.

[71] *Id*.

[72] *See* 12 N.Y. Comp. Codes Rules & Regs, § 460.6; Unemployment Insurance Appeals Board, Attorney and Registered Representative Fee Schedule, available at http://www.labor.ny.gov/sites/ui-appeal/pdf/Attorney-and-Registered-Representative-Fee-Schedule.pdf.

[73] New York State Workers' Compensation Board, Licensed Representative Regulations § 302-1.1, available at http://www.wcb.ny.gov/content/main/wclaws/30213.jsp#sec1b.

[74] *Id*. § 302-1.2.

[75] *Id*. §§ 302-1.4, 302-1.7. Law graduates who are not yet admitted to the bar and law students may also practice before the Board, under a separate set of conditions. *Id*. §§ 302-1.1, 302-1.6.

The regulations specify representatives' duties to their clients and the Board. Among other things, representatives are expected to have full knowledge of their client's case, prepare diligently for handling all matters relating to the case, ascertain and fully disclose to the client the relevant facts and questions of law, fairly advise the client as to the merits of the case, disclose to the client in writing any potential conflicts of interest, transfer or accept transfer of a case only with approval by the Board, and withdraw from representing a client only after giving five days' written notice to the client (which must also be filed with the Board).[76]

The regulations also require representatives to conduct themselves as lawyers would in a court; maintain a register of their cases for Board inspection; display their licenses; and appear only in connection with cases in which they have been directly retained. Representatives may receive fees only if authorized by the Board or by a referee, and are strictly prohibited from receiving any other compensation for their services.[77]

V. Roles for Nonlawyers Are Already Being Expanded

In recent years, several jurisdictions have extended the activities of nonlawyers substantially beyond the limited practices described above. We describe some of those developments here: the "McKenzie Friend" and "lay advocate" concepts in England and Wales; Washington State's authorization of "Limited License Legal Technicians"; and the "independent paralegal" model, variations of which have been adopted in California, Arizona, and Canada.

A. Nonlawyer Advisers in England and Wales

In England and Wales, nonlawyers are allowed to render legal advice to a far greater extent than nonlawyers in the United States. As a general matter, those other countries do not limit to attorneys what we would consider the "practice of law." Instead, they reserve for attorneys the right to provide particular services including the right to conduct litigation, appear before certain courts, prepare various types of contracts, engage in specific probate and notarial activities, and administer oaths. On the other hand, nonlawyers are permitted to write wills, consult on employment disputes, and manage personal injury and other types of claims out of court – all without licensing or regulation. Nonlawyers can also provide immigration advice, although that activity is subject to regulation.[78]

Given this scheme, numerous "advice agencies" offer nonlawyer counseling and other services on a broad range of issues. For example, the Citizens' Advice Bureau announces on its website that it operates in 3,500 locations and provides free advice to more than two million people a year on "any issue," including debt, employment, housing, immigration, "plus everything in between."[79] The advice bureaus direct clients who need more specialized legal advice to trained lawyers, while nonlawyers handle more routine matters.

---

[76] *Id*. § 302-2.1.

[77] *Id*. §§ 302-2.2, 302-2.4.

[78] *See generally* Legal Services Institute, *The Regulation of Legal Services: Reserved Legal Activities – History and Rationale* (Aug. 2010), available at http://www.legalservicesinstitute.org.uk/LSI/LSI_Papers/Discussion_Papers/Reserved_Legal_Activities__History_and_Rationale/.

[79] See http://www.citizensadvice.org.uk/index/aboutus/factsheets/cab_key_facts.htm.

1. "McKenzie Friends"

In England and Wales, lay persons known as "McKenzie Friends" may appear alongside litigants in some court proceedings.[80] Anyone can serve as a Friend, including a family member, neighbor, trained volunteer affiliated with an organization, or someone who regularly serves as a Friend.[81] With disclosure to the court, the Friend can be paid.

The role of McKenzie Friend was established by the courts and is regulated under a court-issued "Practice Guidance."[82] Although litigants have a general right to "reasonable assistance," courts have the discretion to decide in a particular case that "the interests of justice and fairness" do not require assistance by a McKenzie Friend.[83] If assistance is allowed, the Friend is authorized to "provide moral support" to the litigant, "take notes," "help with case papers," and "quietly give advice on any aspect of the conduct of the case.[84] The Friend may not, however "(i) act as the litigants' agent in relation to the proceedings; (ii) manage litigants' cases outside court, for example by signing court documents; or (iii) address the court, make oral submissions or examine witnesses."[85] The emphasis, thus, is on "quiet" advice.

In exceptional circumstances, a court may allow a Friend to take on the additional role of "lay advocate" (described further below), who may then cross-examine witnesses and present oral argument.

Courts "ordinarily" allow the participation of a Friend,[86] but may decline to do so if participation "might undermine or has undermined the efficient administration of justice."[87] The "Practice Guidance" offers the following examples of circumstances in which a Friend may be denied permission to participate:

- the assistance is being provided for an improper purpose;

---

[80] The name "McKenzie Friend" derives from an English divorce case, *McKenzie v. McKenzie*, [1971] P33, [1970] 3 All ER 1034, [1970] 3 WLR 472, in which a lawyer who was qualified to practice in Australia but not in England sought to accompany the husband and offer assistance at trial. The trial court denied permission, but the appellate court, citing precedent going back to 1831, ruled that the lawyer should have been allowed to sit with the husband, take notes, and pass questions to the husband for cross-examination, but not advocate directly to the court.

[81] *See, e.g.*, Cantrell, *supra* note 21, at 888-91. U.K. social service and advocacy groups (such as "Families Need Fathers," www.fnf.org.uk) often provide lists of 'trained" McKenzie Friends.

[82] *Practice Guidance: McKenzie Friends (Civil and Family Courts)*, issued July 12, 2010 ("*Practice Guidance*"), available at http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf.

[83] *Id.* at 1; *see also Regina v. Leicester City Justices et al., ex parte Barrow et al.*, 2 QB 260, [1991] 3 WLR 368.

[84] *Practice Guidance*, at 1.

[85] *Id*.

[86] *Id*.; *see also In the Matter of the Children of Mr. O'Connell, Mr. Whelan and Mr. Watson*, [2005] EWCA Civ. 759, [2005] 3 WLR 1191, [2005] 2 FLR 967.

[87] *Practice Guidance*, at 3.

- the assistance is unreasonable in nature or degree;
- the Friend is subject to a civil proceedings order or a civil restraint order;
- the Friend is using the litigant as a "puppet";
- the Friend is directly or indirectly conducting the litigation;
- the court is not satisfied that the Friend fully understands the duty of confidentiality.[88]

A report by the Civil Justice Council of England and Wales states that "the general view from judges and staff was that on balance it was better to have McKenzie Friends than not."[89] The Council recommended that courts encourage the use of McKenzie Friends.[90] It also stated that courts should allow non-paid Friends to speak in some circumstances, but should be "very resistant" to allowing paid Friends to do so.[91] The Council proposed a code of conduct that guides Friends to be honest, avoid disruption, follow the court's directives, disclose to the court any payments for the Friend's assistance, and reveal to the court and the litigant if the Friend serves that function regularly. The Council also stated that the Friend should "normally decline" to participate in a case if the Friend has "a financial interest in the outcome of the case."[92]

2. "Lay advocates"

As noted above, courts in England and Wales may permit a McKenzie Friend to take on the additional role of oral advocate for an otherwise unrepresented litigant, with authority to examine witnesses and present argument. In such cases, the Friend becomes a "lay advocate."

Courts rarely grant permission to serve as a lay advocate. They are particularly reluctant to grant permission to individuals who charge a fee for their services, or serve repeatedly as lay advocates.[93] Circumstances that have been held to justify lay advocacy include: the lay advocate is a close relative of the litigant; the litigant cannot afford a lawyer and has health problems that preclude self-representation; or the litigant is relatively inarticulate and prompting

---

88 *Id.*

89 "Access to Justice for Litigants in Person (or self-represented litigants)," Report and Series of Recommendations to the Lord Chancellor and to the Lord Chief Justice by the Civil Justice Council (Nov. 2011), at 53, available at http://www.judiciary.gov.uk/NR/rdonlyres/16D9B96A-5610-4677-8AA3-9B1BB05A2F18/0/CivilJusticeCouncilReportonAccesstoJusticeforLitigantsinPersonorselfrepresentedlit.pdf.

90 *Id.* at 53-54.

91 *Id*. at 54.

92 *Id.* at 91-92.

93 *See D v. S (Rights of Audience)* [1997] Fam Law 403, available at http://www.bailii.org/ew/cases/EWCA/Civ/1996/1341.html; *Noueiri v Paragon Finance Plc (No. 2)* [2001] EWCA Civ. 1402, available at http://www.bailii.org/ew/cases/EWCA/Civ/2001/1402.html.

by a non-speaking adviser may unnecessarily prolong the proceedings.[94] The "Practice Guidance" observes:

> [A] person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.[95]

Finally, representation by lay advocates in specific types of proceedings may be authorized by legislation. For example, a Scottish statute allows lay advocacy in cases involving repossession of homes in Scotland.[96]

B. "Limited License Legal Technicians"

In July 2012, the Supreme Court of Washington adopted a "Limited Practice Rule for Limited License Legal Technicians."[97] The Rule establishes a regime under which legal technicians will be licensed to provide services in specific practice areas, to be defined by further regulation. If a client's legal problem does not fall within an authorized practice area, the legal technician must decline the engagement and advise the client to seek the assistance of a lawyer. The Rule does not allow legal technicians to represent clients in court proceedings or out-of-court negotiations.

In authorized practice areas, legal technicians will be allowed to undertake the following tasks:

- obtain relevant information and explain its relevance to the client;
- inform the client of applicable procedures, including deadlines, documents that must be filed, and the anticipated course of legal proceedings;
- inform the client of applicable procedures for proper service of process and the filing of legal documents;
- provide the client with certain approved materials that contain relevant information about legal requirements, case law relevant to the client's claim, and venue and jurisdictional requirements;

---

94 *Practice Guidance* at 4.

95 *Practice Guidance*, at 3; *see also Portelli v. Goh* [2002] NSWSC 997.

96 *See* "Home Owner & Debtor Protection Act of 2010 – Guidance on Lay Representation," available at http://www.scotland.gov.uk/Publications/2010/08/03135201/0.

97 Wash. Sup. Ct. Admission to Practice Rule ("Wash. APR") 28, available at http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf. *See generally* B. Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice," 82 Miss. L.J. 75 (2013), available at http://mississippilawjournal.org/2013/02/the-washington-state-limited-license-legal-technician-practice-rule-a-national-first-in-access-to-justice/.

- review documents or exhibits that the client has received from the opposing side, and explain them to the client;

- select and complete forms that have been approved by certain specified authorities, and advise the client of their significance;

- perform legal research and draft "legal letters" and other documents (beyond the forms noted immediately above), if the work is reviewed and approved by a Washington lawyer;

- advise the client as to other documents that may be necessary to the case (such as exhibits, witness declarations, or party declarations) and explain how they may affect the case;

- assist the client in obtaining necessary documents such as birth, marriage, or death certificates.[98]

The Rule holds legal technicians to the standard of care of a Washington lawyer, and extends to legal technicians the attorney-client privilege and the fiduciary duties of a lawyer. The Rule also specifies essential terms of the legal technician's contract with a client. Before any services are performed for a fee, both parties must sign a written contract that includes these provisions:

- an explanation of the services to be performed, including a conspicuous statement that the legal technician may not represent the client in court, "formal administrative adjudicative proceedings,"[99] or any other formal dispute resolution process, and may not negotiate the client's legal rights or responsibilities;

- an identification of all fees and costs to be charged to the client;

- a conspicuous statement on the first page that the legal technician is not a lawyer and may only perform limited legal services;

- a statement that upon the client's request the legal technician will deliver to the client any documents submitted by the client to the legal technician;

- a statement describing the legal technician's duty to protect the confidentiality of information provided by the client and the legal technician's work product;

---

[98] Wash. APR 28(F).

[99] The Rule incorporates certain exceptions provided by Washington's definition of the "practice of law." One of those exceptions allows acting as a "lay representative authorized by administrative agencies or tribunals." *See* Wash. Sup. Ct. Gen. Rule 24(b)(3), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24.

- a conspicuous statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees; and

- any other conditions required by rules or regulations to be issued later.[100]

The Rule imposes certain additional requirements, including:

- completion of an ABA-approved paralegal training program;

- two or three years' work experience as a paralegal under the supervision of a lawyer;

- admission requirements, including an examination and proof of good moral character;

- maintenance of a principal place of business with a physical street address; and

- ongoing requirements for maintenance of legal technician status, including continuing education requirements, payment of an annual fee, and annual "proof of fiscal responsibility."

The Rule establishes a Limited License Legal Technicians Board, which is tasked with developing more detailed regulations and administering the program on a day-to-day basis. The Board's responsibilities include recommending to the Washington Supreme Court specific areas in which legal technicians will be authorized to practice; specifying more detailed licensing requirements; developing rules of professional conduct and procedures for disciplinary actions; processing applications; and administering required examinations.[101] In light of the multiplicity of open issues that the Board must address, the program is not expected to begin operation until 2014.[102]

C. "Independent Paralegals"

Another expansion of nonlawyer roles has taken place under the rubric of "independent paralegals." This type of practitioner has some legal training and provides service for a fee directly to clients without attorney supervision, rather than to clients of a lawyer who employs or retains the paralegal and remains responsible for his or her work.[103]

---

100 Wash. APR 28(G)(3).

101 Wash. APR 28(C).

102 Washington State Bar Ass'n, *Limited License Legal Technician Board* (Feb. 2013) http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/~/media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Meeting%20Materials/20130221%20Meeting%20Materials.ashx.

103 Confusingly, the term "independent paralegal" also may be used to refer to nonlawyers who provide services for a fee in certain administrative proceedings (described in Section IV.B above).

In addition to the term "independent paralegal," various other titles may be used to describe providers of such services. For example, California and Arizona have authorized nonlawyers to provide certain types of services as "legal document preparers" and "legal document assistants," respectively. The scope of services is essentially the same for both: assisting clients with the preparation of legal documents without attorney supervision. Under Arizona's rules, "legal document preparers" must meet initial and continuing educational requirements, pass an examination, and abide by a code of conduct; the rules explicitly prohibit the provision of legal advice, opinions, or recommendations.[104] Similarly, California prohibits "legal document assistants" from providing legal advice or explanation.[105] (Whether such prohibitions are violated by internet and in-person businesses that sell document assembly and related services is the subject of ongoing debate and, in some instances, legal action.[106])

Similar developments have taken place outside the United States. In 2007, for example, Ontario's regulatory body for the legal profession, the Law Society of Upper Canada, allowed "licensed paralegals" to begin providing fee-based legal services to clients in minor civil and criminal matters. The regulatory framework established there resembles in some respects Washington State's more recent legal technicians rule, discussed above. Ontario, however, has gone further: licensed paralegals may provide certain types of litigation advice, prepare court filings, and negotiate for clients with respect to small claims court cases, traffic offenses, landlord-tenant disputes, administrative matters, and minor criminal offenses. In a five-year review of Ontario's program, the Law Society reported that "regulation of paralegals has been successful." The Law Society concluded that "[c]onsumer protection has been balanced with maintaining access to justice and the public has thereby been protected."[107]

VI. Overview of New York's Prohibition of the Unauthorized Practice of Law

In New York and many other jurisdictions, nonlawyers are prohibited from engaging in the practice of law or from holding themselves out as able to practice law.[108] The prohibition has salutary goals that include preventing fraudulent impersonations and incompetent services by nonlawyers who lack the necessary qualifications and skill. The prohibition is relevant to a consideration of new models for nonlawyer services.

We briefly review New York's law here. The extent to which changes in the law may be needed depends on the particular proposal in question. The Committee invites discussion of the models as general concepts and looks forward to building a consensus for particularized versions of those models. As that occurs, the Committee will be able to address whether changes in the law are necessary to accommodate the specific proposals under consideration.

---

104 Ariz. Sup. Ct. Rule 31; Ariz. Code of Judicial Administration § 7-208, available at http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx.

105 Cal. Bus. & Prof. Code § 6400.

106 *See, e.g.*, *ABA Nonlawyer Study* at 36-39, 46-48, 59-60.

107 The Law Society of Upper Canada, *Report to the Attorney General of Ontario* (June 2012), at 3, available at http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488010.

108 For a history and survey of state laws prohibiting the unauthorized practice of law, see *ABA Nonlawyer Study* at 1, 13-32, 60-72; see also Cantrell, *supra* note 21, at 892-94 (questioning whether UPL prohibitions are effective tools for protecting consumers).

New York's Judiciary Law broadly prohibits nonlawyers from engaging in the practice of law. Although "the "practice of law" is a malleable term, the statute generally bars unlicensed individuals from providing legal advice, holding oneself out as a lawyer, and preparing certain legal documents. Judiciary Law § 478 declares:

> It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.

Because § 478 refers to proceedings in a "court of record," it does not prohibit various nonlawyer services described above in connection with administrative proceedings.[109]

In addition, Judiciary Law § 484 designates specific activities that constitute the unauthorized practice of law:

> No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate, wills, codicils, or any other instrument affecting the disposition of property after death, or decedents' estates, or pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate unless he has been regularly admitted.

Similarly, courts have defined the unauthorized practice of law as including "rendering legal advice," "appearing in court and holding oneself out to be a lawyer," and preparing legal documents for a lay person.[110] In addition, Rule 5.5(b) of the New York Rules of Professional

---

[109] *See, e.g., Matter of Bd. of Educ. of Union-Endicott Cent. School Dist. v. New York State Pub. Employment Relations Bd.*, 233 A.D.2d 602, 649 N.Y.S.2d 523 (3d Dep't 1996). The statute also provides exceptions for law students, law graduates who have not yet been admitted to the bar, and "officers of societies for the prevention of cruelty to animals," under specified conditions.

[110] *El Gemayel v. Seaman*, 72 N.Y.2d 701, 706 (1988) (citing *Spivak v. Sachs*, 16 N.Y.2d 163, 168 (1965)); *In re Roel*, 3 N.Y.2d 224, 230 (1957). As of November 1, 2013, violation of Judiciary Law § 478 or § 484 will constitute a class E felony if a nonlawyer "(1) falsely holds himself or herself out as a person licensed to practice law in this state, a person otherwise permitted to practice law in this state, or a person who can provide services that only attorneys are authorized to provide; and (2) causes another

Conduct prohibits a lawyer from aiding a nonlawyer in the practice of law. Comment 2 notes that "[t]he definition of the 'practice of law' is established by law and varies from one jurisdiction to another." It also notes that the Rule "does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work."

VII. The Committee's Recommendations

A. Recognize a Role for "Courtroom Aides" in Judicial and Administrative Hearings

As already discussed, nonlawyers are authorized to assist individuals in various federal and state administrative settings and certain court proceedings. (See Section IV above.) Similarly, courts in England and Wales allow "quiet" assistance by a McKenzie Friend, and sometimes allow the Friend to present evidence and argument as a lay advocate. (See Section V.A above.) In some circumstances, the nonlawyer is allowed to charge a fee.

The Committee endorses this concept, referred to here as the "courtroom aide" model, and recommends its application in appropriate forms to a broader range of forums. Assistance by a courtroom aide can be expected to facilitate proceedings in ways that benefit the litigant, the tribunal, and the justice system as a whole.[111] For individuals with educational, language, or cognitive limitations, the courtroom aide can be especially helpful, not only as a source of information and emotional and administrative support, but also as an advocate.[112]

In appropriate categories of cases, unpaid friends or relatives should be allowed to provide such assistance without elaborate regulation, but subject to approval and oversight by the presiding judge or administrator.

In addition, consideration should be given to whether, in a more limited range of cases, it may be appropriate for a nonlawyer to be compensated for work done in the role of a courtroom aide, recognizing that nonlawyers who are paid for their services should be subject to formal regulation regarding matters such as qualifications, mandatory disclosures, fee arrangements, and standards of conduct, in addition to on-the-scene supervision by the adjudicator.

We do not suggest an unthinking adoption of the courtroom aide model. It is particularly important to identify those judicial or administrative proceedings in which a role for a courtroom

---

person to suffer monetary loss or damages exceeding one thousand dollars or other material damage resulting from impairment of a legal right to which he or she is entitled." N.Y. Judiciary Law § 485-a.

[111] *See, e.g.*, David Rubel, *Stem the Tide: A New Certification Program for Government Benefits Advocates as a Response to the Growing Crisis in Poor Communities* (Nov. 2007) (suggesting that certification of "government benefits advocates" would reduce the burden on the legal services bar by drawing more people into roles as advocates in social services agencies), available at http://www.davidrubelconsultant.com/publications/1997%20govt%20advocates%20certification%20concept%20paper.pdf.

[112] The Committee does not suggest that a courtroom aide's assistance would be equivalent to that of lawyers, interpreters, or other professional participants in the proceedings, or that such assistance would relieve the court or agency of any of its responsibilities to the parties before it.

aide would provide the greatest benefits, and to provide standards under which the tribunal may decide that nonlawyer assistance is inappropriate.

Finally, our current proposal should not be viewed as attempting to modify any tribunal's existing regime for nonlawyer advocacy.

B. Recognize a Role for "Legal Technicians" Outside Judicial and Administrative Hearings

The Committee also recommends that New York adopt some form of Washington State's legal technician model for nonlawyer assistance, performed for compensation, outside of judicial and administrative hearings. (See Section V.B above.)

In making this recommendation, the Committee recognizes, as did Washington's Supreme Court, that properly trained nonlawyers are potentially capable of performing a range of law-related tasks responsive to the unmet needs of low-income people.

The Committee recognizes the need for regulation and oversight to ensure the quality of services provided by nonlawyers. In particular, the Committee endorses Washington State's set of mandatory disclosures to be embodied in a written contract between the legal technician and the client. The Committee is also mindful that excessive regulation may impose costs, burdens, and delays that will undercut the impact that such services may have in closing the justice gap. Achieving the proper balance between these two considerations is essential.

C. Consider Additional Roles for Nonlawyers

The Committee believes that the sheer size of the justice gap requires consideration of additional roles for nonlawyers. At best, the Committee's current proposals will narrow the gap incrementally; they cannot eliminate it completely. We therefore believe that it is important to consider additional steps, including limited authorizations of nonlawyers to render certain types of legal advice, conduct financial negotiations, and advocate in court beyond the parameters of the Committee's current proposals. Such steps would require careful analysis of the need for additional services and the concomitant need for additional safeguards and oversight. Without further study, the Committee cannot endorse such proposals at this time. Nevertheless, the Committee believes that further study by this Committee and by other committees of the New York City Bar is warranted.

D. Address Concerns

The Committee recognizes that concerns will be raised in response to its proposals. For example: Will nonlawyers be competent to perform the additional services? What kinds of regulatory regimes will be effective and practical? Will there be a market demand for the proposed services? And will expanding the role of nonlawyers promote a "two-tier" justice system? We offer some brief responses here. At the same time, we look forward to addressing the full range of concerns in greater detail as public debate continues.

Will nonlawyers be competent to handle the proposed services? The Committee acknowledges the need for detailed specifications of the additional tasks that nonlawyers may perform in particular settings, and the types of training and oversight necessary to ensure that those tasks are performed competently. At the same time, the Committee is reassured by the record of success achieved by many nonlawyers in guiding claimants through proceedings before federal and state agencies. In many respects, the tasks they fulfill are more complex and demanding than the tasks proposed in this report for courtroom aides in judicial or administrative proceedings, or for legal technicians outside such proceedings.

What kinds of regulatory regimes should be established? As discussed above, a number of federal and state agencies have already established formal regimes for the training, licensing, and supervision of nonlawyer advocates. The Committee does not propose altering any agency's existing rules and practices. A basic premise of the Committee's approach is that each tribunal should retain discretion to tailor its regulations in accordance with the special features of its caseload and jurisdiction. At the same time, the regimes already in place can inform the development of models for other judicial and administrative settings. Likewise, Washington State's legal technician regime can guide the development of models for nonlawyer services outside judicial and administrative hearings.[113]

The Committee does not recommend wholesale adoption of these or any other models. The appropriate type of regulation depends on the particular setting and the specified scope of the nonlawyer's activity. For example, where a courtroom aide is authorized to speak only when called upon by the court, the court retains direct control of the proceedings, reducing the need for independent oversight – although in some circumstances further regulation and even licensing will be appropriate, particularly if a nonlawyer advocate provides services for a fee. Similarly, the appropriate types of oversight in non-adjudicative contexts will depend on the breadth and complexity of the tasks to be performed. In any context, however, a balance must be struck between ensuring the quality of services and facilitating entry into the field.[114]

Will the new models be economically viable? The Washington Supreme Court specifically addressed this issue, observing that "[n]o one has a crystal ball," and "[t]here is simply no way to know the answer to this question without trying it." Some have questioned the existence of a significant consumer demand for nonlawyer services, arguing that if the demand existed, it would have been satisfied by now by the many recent law graduates who are currently unemployed. But an unmet demand for such services clearly does exist. It is often fulfilled – inadequately – by notarios and others who operate in the shadows of our legal system, without training or competency requirements. The legal technician model offers an opportunity to bring that activity out of the shadows and expose it to regulation. In any event, economic arguments against expanding nonlawyer services are hardly persuasive enough to preclude even modest experimentation. The limited proposals presented here deserve real-world tests.

---

[113] Various other models have been suggested as well. For example, Prof. Rigertas has suggested a licensing scheme for "housing advocates," who would provide legal advice in connection with real estate closings, landlord-tenant disputes, and foreclosures. Advocates would be required to complete courses in substantive law and professional responsibility, receive clinical training, and pass a qualifying examination. *See* Rigertas, *supra* note 31, at 98.

[114] For a detailed discussion of analytical criteria relevant to determining the appropriate forms of regulation for different types of nonlawyer activities, see *ABA Nonlawyer Study* at 136-50.

Will the new roles promote a "two-tier" justice system? The Committee submits that we already confront a stark "two-tier" system, in which represented parties often face pro se litigants, with typically lopsided results. Expanding the scope of nonlawyer assistance will reduce rather than promote the extreme inequalities of the present system. The Committee strongly supports efforts to increase access to traditional legal counsel through pro bono work, legal aid services, and other programs. At the same time, such efforts alone cannot close the justice gap. Much more is needed.

VIII. Conclusion

The Committee has presented two proposals: (1) permit "courtroom aides" to participate in judicial and administrative hearings beyond those in which they are authorized to participate now; and (2) permit "legal technicians" to provide specified forms of assistance outside judicial and administrative hearings. The Committee believes that, with appropriate safeguards, adoption of these proposals will help to narrow the justice gap. The Committee also supports studying additional roles for nonlawyers. Every year millions of low-income New Yorkers face potentially life-changing events in our civil justice system without access to professional assistance. The New York bar can and should work creatively to address this crisis. The Committee joins the growing call for action and looks forward to participating in the search for solutions.

June, 2013

David Lewis
Chair, Committee on Professional Responsibility

Rebecca Ambrose
Secretary, Committee on Professional Responsibility

Access to Justice Sub-Committee

David Udell, Chair
Stuart Altschuler
Justine Borer
Lia Brooks
Sherry Cohen
Guy Dempsey
Judith Mogul

Utah State Courts

Supreme Court Task Force to Examine Limited Legal Licensing

Report and Recommendations November 18, 2015

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

(1) INTRODUCTION AND SUMMARY

(a) INTRODUCTION

Probably most Utah communities are not that different from "Middle City, USA," a mid-size, mid-West community that was the location of the 2014 Community Needs and Services Study by the American Bar Association.[1] In a random sampling of adults in Middle City, 66% of the respondents had experienced an average of 3.3 "civil justice situations"[2] in the previous 18 months, almost half of which resulted in "a significant negative consequence." Yet respondents identified only 9% of the situations as "legal" and another 4% as "criminal." In other words, many may not have recognized recourse to the courts as an option.

About 16% of the people facing a civil justice situation did nothing; 46% relied on self-help; and 23% relied on the help of family or friends. Only 22% used the assistance of a lawyer or other professional. Somewhat surprisingly, 21% of the situations were described as "properly dealt with within the family or community." In other words, to a substantial minority, using an outside third party to seek a legal remedy seemed inappropriate.

Forty-six percent relied on self-help. That is, as well as we can estimate, about the percentage of self-represented parties in select types of litigation in the Utah district court, and the imbalance of self-representation between petitioners and respondents is even more stark. Probably the other circumstances, opinions and responses of the residents of Middle City represent those of Utah residents as well.

The cost of legal services is often cited as a major reason that people with need of legal services do not employ lawyers,[3] yet in the Community Needs

---

[1] Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study. Rebecca L. Sandefur, American Bar Association, University of Illinois at Urbana-Champaign, 2014. (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478040; http://perma.cc/3K7P-UPD2).

[2] Employment, rental housing, owned housing, money, debt, insurance, government benefits, education, relationship breakdown, personal injury, criminal negligence.

[3] See, for example, Robert Ambrogi, *Washington State moves around UPL, using legal technicians to help close the justice gap*, ABA JOURNAL (Jan. 1, 2015, 5:50 AM), (http://www.abajournal.com/magazine/article/washington_state_moves

and Services Study "concerns about cost were a factor in 17% of cases," even though 58% of respondents agreed with the statement that "lawyers are not affordable for people on low incomes."[4] The cost of legal services cannot be ignored as a factor in the number of self-represented parties, but a common perception is that an increasing number of people choose to represent themselves and seek help only as needed.

Given our charge and the high concentration of self-represented parties in select casetypes, we have focused primarily on creating a supply of non-lawyer paraprofessionals qualified to provide specified legal services in specified practice areas. In doing so, we have been guided by the ABA Commission on the Future of Legal Services draft resolution[5] urging "each state's highest court, and those of each territory and tribe, to be guided by the ABA Model Regulatory Objectives to help (1) assess the court's existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession" The commission's regulatory objectives are:

- Protection of the public
- Advancement of the administration of justice and the rule of law
- Access to information about, and advancement of the public's understanding of, the law, legal issues, and the civil and criminal justice systems
- Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- Delivery of affordable and accessible legal services
- Efficient, competent, and ethical delivery of legal services
- Protection of confidential information

_around_upl_using_legal_technicians_to_help_close_the; http://perma.cc/FL75-QKAR): "[M]ultiple state and federal studies [show] that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford."

[4] Community Needs and Services Study, *Id.* at pages 3, 13 and 15.

[5] (http://www.americanbar.org/content/dam/aba/images/office_president/draft_regulatory_objectives.pdf; http://perma.cc/2HWB-9LNY).

- Independence of professional judgment
- Accessible civil remedies for breach of duties owed and disciplinary sanctions for incompetence, misconduct, and negligence
- Diversity and inclusion among legal services providers and freedom from discrimination in the delivery of legal services and in the justice system

We have also included five other strategies to meet the needs of self-represented parties for assistance with their civil justice situations and to improve access for everyone.

We recognize the value of a lawyer representing a client in litigation, or advising a client about options, or counseling a client on a course of action. We recognize the valuable services that lawyers provide to their clients every day, in and out of court. But the data show that, even after years of effort with pro bono and low bono programs, a large number of people do not have a lawyer to help them. The data also show that the demand is focused on the areas where the law intersects everyday life, creating a "civil justice situation." The people facing these situations need correct information and advice. They need assistance. Our purpose is to consider and recommend whether there is an alternative source for that assistance.

Given the time available to us and the need for policy decisions before beginning the arduous work of implementation, this report remains a planning blueprint. If our recommendations are approved, we recommend that the supreme court appoint a steering committee to guide the next steps.

(b) TASK FORCE CHARGE

In May, 2015, the supreme court created this task force to:

- examine emerging strategies and programs that authorize individuals to provide specific legal assistance in areas currently restricted to licensed lawyers; and
- recommend whether similar programs should be established in Utah.

Specifically, the court asked us to:

- examine the Limited Licensed Legal Technician Program in the State of Washington—as well as other, similar programs;
- determine the origin, purpose, content, requirements, cost, authorizing entity, administration and evaluation of these programs;

- evaluate whether the programs would materially improve access and affordability for select types of legal assistance;
- evaluate the balance between increasing access and ensuring consumer protection;
- evaluate where the greatest need for legal assistance exists and how these programs might address that need; and
- consider issues that would have to be addressed in the implementation, regulation and administration of a program, such as:
  - role definition;
  - training/certification requirements;
  - scope of services;
  - regulatory authority; and
  - supervision/quality control/complaint process.

We were ably assisted in this inquiry by Dr. Thomas Clarke, Director of Research and Technology for the National Center for State Courts. At our request, Dr. Clarke and the National Center for State Courts prepared a white paper with analysis and recommendations.[6] Dr. Clarke's experience and opinions were invaluable, and we express our sincere appreciation.

Our research and materials, including this report, are on the court's website at http://www.utcourts.gov/committees/limited_legal/; http://perma.cc/9GCN-2J3R.

(c) SUMMARY OF RECOMMENDATIONS

(1) The supreme court should:

- Exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner in three practice areas:
  - temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
  - eviction; and
  - debt collection.

---

[6] Non-Lawyer Legal Assistance Roles—Efficacy, Design, and Implementation. Thomas Clarke, Director of Research and Technology for the National Center for State Courts. (http://www.utcourts.gov/committees/limited_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf; http://perma.cc/A92U-NBQJ)

- Within an approved practice area, authorize a licensed paralegal practitioner to:
    - establish a contractual relationship with a client who is not represented by a lawyer;
    - conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
    - complete court-approved forms on the client's behalf; advise which form to use; advise how to complete the form; sign, file and complete service of the form; obtain, explain and file any necessary supporting documents; and advise the client about the anticipated course of proceedings by which the court will resolve the matter;
    - represent a client in mediated negotiations and consider whether to authorize a licensed paralegal practitioner to represent a client in unmediated negotiations;
    - prepare a written settlement agreement in conformity with the mediated agreement; and
    - advise a client about how a court order affects the client's rights and obligations.
- Establish education requirements and regulatory requirements to qualify as a licensed paralegal practitioner.

(2) If the supreme court approves these recommendations, the court should appoint a steering committee to plan, design and implement the program details.

(3) The board of bar commissioners should implement as soon as possible the recommendations of its futures commission to build an online lawyer directory and for increasing the use of discrete task legal services.

(4) The judicial council should:

- work with the committee on resources for self-represented parties to:
    - develop forms appropriate for approved practice areas;
    - improve existing forms; and
    - publish information about the facts and procedures relevant to the forms;
- establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties;
- continue to plan, design and build an online dispute resolution application; and

- request an appropriation to fund additional work by the self-help center to instruct court staff, public library staff, community and faith-based groups and other volunteers to enable them in turn to assist others, for free, with general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies and to assist in completing court-approved forms.

(2) THE PRACTICE OF LAW IN UTAH

(a) AUTHORITY OF THE SUPREME COURT TO GOVERN THE PRACTICE OF LAW

"The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law."[7] "Admission to practice law" should retain its traditional meaning; that is, lawyers who are licensed by the supreme court after meeting the minimum qualifications established by rule and the procedures of the board of commissioners of the Utah State Bar. Elsewhere in Utah law—the qualifications of a judge of a court of record, for example—the phrase is used as a term of art to mean "lawyers."

Later in this report we recommend that the supreme court exercise its authority to "govern" the practice of law to establish rules authorizing a paraprofessional who is not a lawyer to do some of the things traditionally reserved for lawyers. The paraprofessional will be engaged in the practice of law by performing specified tasks in specified practice areas, but will not be "admitted" to practice law.[8] The limited tasks fit well within the traditional definition of the practice of law, even though the paraprofessional is not a lawyer. The supreme court's exclusive authority to establish this policy is established in the Utah constitution and recognized by statute. Utah Code Section 78A-9-103(1)(a) provides:

> *Unless otherwise provided by law or court rule*, an individual may not practice law or assume to act or hold himself or herself out to the public as an individual qualified to practice law within this state if that individual is not admitted and licensed to practice law within this state.... (emphasis added)

---

[7] Utah Constitution Art VIII, Section 4.

[8] We also recommend separate licensing, conduct, discipline, and administrative regulations for this new paraprofessional.

The respective authority of the supreme court and the legislature over the practice of law has been described as the supreme court governing the authorized practice of law and the legislature governing the unauthorized practice of law. See Board of Commissioners of the Utah State Bar v. Petersen, 937 P.2d 1263, 1270 (Utah 1997). Section 78A-9-103 prohibits practicing law without a license and provides a civil remedy for the board of commissioners of the Utah State Bar.

(b) SUPREME COURT RULES

The practice of law is a defined term, and, with certain exceptions, only lawyers may do it. Initially adopted in 2005 under a different system for organizing the rules governing the practice of law, Rule 14-802 now provides:

> [O]nly persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah. ... The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.
>
> Special Practice Rules. Rule 14-802(a)(2) and (b).

Rule 14-802(c) then removes from the definition certain services that possibly satisfy the general definition, but which nevertheless are not the practice of law. In other words, sometimes a non-lawyer with specified credentials and sometimes anyone may perform the following services; sometimes for a fee and sometimes only for free; always without the supervision of a lawyer.

> (1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
>
> (2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
>
> (3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.[9]

(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(7) Representing a party in any mediation proceeding.

(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(11) Lobbying governmental bodies as an agent or representative of others.

(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

---

[9] Rule 13 provides: "A party in a small claims action may be self-represented, represented by an attorney admitted to practice law in Utah, represented by an employee, or, with the express approval of the court, represented by any other person who is not compensated for the representation."

> (12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.
>
> (12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.
>
> (12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.
>
> (12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.
>
> (12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.
>
> Special Practice Rules. Rule 14-802(c).

In addition to restricting the practice of law to "active, licensed members of the Bar in good standing" under Rule 14-802, a separate rule, which prohibits practicing law without a license covers much of the same ground.

> Pursuant to Rule 14-506(a), no person who is not duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his or her license and other fees or otherwise, shall practice or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate,

> which action or which proceedings shall be instituted by the Bar after approval by the Board.
>
> Rules of Integration and Management. Rule 14-111.[10]

A third rule authorizes paralegals to perform an unspecified range of legal services that would normally be performed by a lawyer, provided the services are for a lawyer or the paralegal is supervised by a lawyer.

> A paralegal is a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity of function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A paralegal includes a paralegal on a contract or free-lance basis who works under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.
>
> Rules of Integration and Management. Rule 14-113(a).

We have restated the laws regulating the practice of law in some detail because our charge is to examine whether and to what extent someone other than a licensed lawyer might practice law.

(3) PROGRAM DESIGN PRINCIPLES

We have tried to identify the gaps in legal services and to find solutions that address those gaps. We have tried to view the need for legal services from the client's perspective: the desire for relevant, competent, accessible and affordable service.

We conclude that the authority of a paraprofessional should be limited along two lines of inquiry: (1) the potential demand for assistance within a practice area, as measured by the high concentration of self-represented parties; and (2) specified authority, as determined by the needs of the client or by what is proper for the paraprofessional's minimum qualifications, whichever limit is reached first.

---

[10] The supreme court should consider repealing this rule. Given the provisions of Rule 14-802 and Section 78A-9-103, it seems superfluous.

(4) PRACTICE AREAS OF GREATEST DEMAND

There is little point to extending the authority of a paraprofessional into areas in which there is no demand. To detail the first line of inquiry, we look to fiscal year 2015 court records that show the casetypes in which parties largely are not represented by lawyers. Previous years are similar.

Table 1. Self-Represented Parties in Select Casetypes

Casetype	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Paternity	1,043	36%	44%	20%	23%	61%
Contracts	2,608	28%	71%	1%	1%	71%
Protective Order	4,744	23%	35%	42%	48%	71%
Custody & Support	1,281	20%	49%	31%	36%	76%
Divorce/Annulment	13,227	19%	31%	50%	52%	80%
Temporary Separation	85	19%	38%	44%	52%	73%
Civil Stalking	858	13%	18%	69%	79%	77%
Eviction	7,465	4%	83%	13%	13%	96%
Debt Collection	67,510	2%	98%	0%	0%	98%
Guardianship	1,622	1%	43%	56%	57%	3%
Conservatorship	143	1%	84%	15%	15%	2%
Adoption	1,352	1%	84%	14%	14%	4%
Name Change	1,014	0%	17%	83%	83%	1%
Personal Representative	2,107	0%	87%	12%	12%	0%
Total	105,059	6%	81%	12%	13%	87%

Focusing on the three areas in which the concentration of self-represented parties is highest—family law cases, including temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change; eviction; and debt collection—the number of self-represented parties is very high, both in the absolute number of self-represented parties and in the number of self-represented parties as a percent of all parties.

Case Type	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Family Law	23,604	18%	36%	46%	49%	69%
Debt Collection	67,510	2%	98%	0%	0%	98%
Eviction	7,465	4%	83%	13%	13%	96%

The gaps in these areas are substantiated by two 2014 data sets from Utah Legal Services.

Table 2. Utah Legal Services Areas of Client Services

Area	Clients
Divorce	3506
Housing, utilities	2996
Small estates and consumer protection	2106
Paternity, support, custody, visitation	1508
Adult services	1500
Domestic violence, abuse and neglect, child abuse	1467
SSI, SSDI	975
Medicaid, Medicare	490
Employment	220

Area	Clients
All others	157
Guardianships, Conservatorships	153
Food	70
Adoption	66
Indian and Tribal law	63
Education	15
Disability	6
Independence, communication	3
Total	15,301

Table 3. Areas of Client Service by Pro Bono Lawyers Recruited by ULS

Area	Clients
Bankruptcy/Debtor Relief	250
Divorce	192
Paternity/Custody	56
Domestic Abuse	25
Advanced Directives	14
Guardianship/Conservatorship	12
Wills/Estates	10
Other	9
Collection	7
Housing	5

Area	Clients
Contracts	3
Adoption	2
Name Change	2
Stalking	2
Human Trafficking	2
Torts	2
Support	1
State Assistance	1
SSI	1
Total	596

(5) PROCEDURAL AREAS OF PARAPROFESSIONAL COMPETENCE

The process of civil litigation that has evolved over centuries is not simple, and it continues to evolve. Some parts of that process must be reserved for lawyers because only law school teaches the necessary information and skills. Other parts of the process can be negotiated by a paraprofessional. To detail the second line of inquiry, we have tried to identify through the course of litigation the services that a self-represented party might need and whether a paraprofessional might appropriately provide those services.

(a) HOW DO PEOPLE GET ADVICE ABOUT REMEDIES TO THEIR "CIVIL JUSTICE SITUATIONS"?

Paraphrasing Rule 14-802: "Do I need someone to apply the law to my circumstances and inform, counsel, advise, assist, advocate for or draft

documents for me?" Based on the experience of task force members, we know that unlicensed providers are serving some of these needs beyond what is now permitted.

General legal information is available from a variety of sources. In addition to the Utah state courts and government agencies, non-profit organizations such as the Utah State Bar, Utah Legal Services and the Legal Aid Society of Salt Lake City provide information, primarily for self-represented parties. Private attorneys sometimes include on their websites general information about rights and remedies in the area of law in which they practice. Several commercial internet sites do the same. There are several free legal clinics around the state. Schools, libraries, law enforcement agencies and consular officials are resources. Homeless shelters, domestic violence shelters, and community and faith-based organizations assist as well.

Many organizations provide court-approved forms. Some organizations provide them for free; others charge a fee.

Filtering and providing information, opinions and recommendations about relevant laws and procedures are tasks appropriate for a paraprofessional. A paraprofessional should be able to do at least as much as is permitted by Rule 14-802(c)(2): "Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances."

A paraprofessional can be educated to conduct initial client interviews, identify needs, advise whether those needs can be met by the paraprofessional or require a lawyer's skills, and otherwise inform clients of options. A paraprofessional can be educated to provide information on navigating the legal system: what are the steps in the litigation process; what forms are needed; where to obtain them; how to file them; etc.

Unless there is an approved form, moving beyond "information, opinions or recommendations" to counsel and advice should be reserved for a licensed lawyer. Just as diagnosis of a symptom's cause is at the core of the physician's role, recognizing that a person's circumstance creates legally enforceable obligations, rights and remedies is at the heart of what lawyers do. Lawyers, also like doctors, should be the only professionals authorized to advise on a course of action, and assist in completing that course of action.

Compare the services of Rule 14-802(b)(1), which only a licensed lawyer may provide,

> The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

with the services of Rule 14-802(c)(2), which anyone provide.

> Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

The difference between "specific advice" and "general ... opinions or recommendations" about rights, remedies, defenses, options or strategies is a fine line to be sure. But it is a line paraprofessionals should be educated to understand and honor.

In the area of "general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies," Utah law would currently allow a paraprofessional to provide much more value to a client than is permitted in most other states without crossing that line.

The permission given by Arizona law, for example, is exactly opposite Utah. As is described in the section on Arizona document preparers, the document preparer is expressly prohibited from giving opinions or recommendations about possible legal rights, remedies, defenses, options, or strategies. In Utah a person is expressly permitted to do just that. A step beyond is the Washington limited license legal technician who can advise a client about his or her particular circumstances.

(b) HOW DO PEOPLE OBTAIN AND PREPARE FORMS?

Court forms have been around for at least decades if not centuries. The offices of court clerks always used to include a forms cabinet with a pigeon hole for each form. Advice on which form to use and how to complete it was often requested and given. The primary difference today is that approved forms are on the internet rather than in the cabinets of court clerks.

Unapproved forms also are available on the internet rather than at the stationer's shop. A paraprofessional will appreciate the difference between approved and unapproved forms. A self-represented party might not. Unapproved forms may or may not be legally sufficient. A person filing an unapproved form may spend a lot of time and money only to have the proceeding dismissed.

If an approved form exists within a practice area, then an authority has decided that a particular collection of information is necessary to achieve a particular objective. The form is designed to elicit that information. The same is true whether the form is a traditional fill-in-the-blank-and-check-the-box form or a web-based interactive interview conducted by software that produces a digital file suitable for saving and electronic filing.

Advising a client about which form to use overlaps a little of the attorney's core role, but choosing one set of forms rather than another is a relatively simple task. Approved district court forms are organized by objective: "I want to:

- garnish a debtor's wages
- change my visitation schedule
- be appointed guardian of Dad
- evict a tenant
- adopt my stepchild
- etc."

If a client comes with an objective in mind and a form has been approved to request that result, selecting the correct form is a task suitable for a paraprofessional. For a contrary approach, see the authority of a California legal document assistant.

Once the form is selected, a paraprofessional can help gather the information needed to complete the form. Sometimes the information is simple; sometimes complex. In either event, a paraprofessional is capable of the task.

Under Rule 14-802, anyone can provide "clerical assistance" to another to complete a court-provided form when no fee is charged to do so. Presumably "clerical assistance" means acting as a scribe. The California legal document assistant is limited to the scrivener's role.

If assistance goes only so far, it is of little value. To increase the value to a client, assistance must include the authority to explain the purpose, relevance and relationship of the entries and to assist with phrasing an entry. Once prepared, a paraprofessional should have the authority to sign, file and complete service of the form on behalf of his or her client. This is similar to the Arizona legal document preparer.

Rule 14-802 allows a person to provide clerical assistance in completing court-approved forms on behalf of another. If a paraprofessional is authorized to provide greater advice and assistance with forms in an approved practice area, the paraprofessional should also be able to obtain

and explain documents necessary to support the form. For example, if a paraprofessional assists a client to complete a financial declaration form as part of establishing child support, the paraprofessional should also be able to help the client obtain his or her tax return, which is a necessary supporting document. Or, under Section 26-2-25, upon entry of a decree of divorce or adoption, a form must be filed with the Office of Vital Records and Statistics. It is not a court form, but it is a necessary part of the court process.

If there is no approved form for a particular objective, then there is no agreed-upon collection of information needed to achieve that objective. That being the case, drafting pleadings and other documents for which there is no form should be reserved for a licensed lawyer. For a contrary approach, see the description of a Louisiana notary public. A Washington limited license legal technician may prepare documents other than forms, but only if the document is reviewed and approved by a lawyer.

In the previous section we identified debt collection cases as an area in which there is a need for legal services. However, there are no approved forms specifically for debt collection cases, and, until there are, the services of a paraprofessional in this practice area will necessarily be limited to other specified tasks and forms that apply more generally but can be used in this practice area.

(c) HOW DO PEOPLE PARTICIPATE IN MEDIATION?

Rule 14-802(c)(7) permits anyone to represent another in mediated negotiations. We believe that a paraprofessional should have at least the same authority as any other person, but we are divided on whether a paraprofessional should be authorized to negotiate without a mediator. Some see no sound reasons for distinguishing between the two circumstances. Others see the third-party neutral as creating a dynamic that levels any power imbalances, enabling a non-lawyer to negotiate on behalf of a client.

Mediators sometimes but not always memorialize settlement agreements. Parties often are not represented in mediated negotiations, and the only person with the wherewithal to memorialize the agreement is the mediator. If a paraprofessional is representing someone in the mediation, that person is in as good a position as the mediator to memorialize the agreement. There should be no risk of overreaching because the mediator can identify any discrepancy between the written and oral agreements and the other party can reject the written agreement as not conforming to the oral agreement.

However, a paraprofessional should be able to prepare a form of order based on the settlement agreement only if there is an approved order form.

(d) HOW DO PEOPLE PARTICIPATE IN HEARINGS?

Traditionally only lawyers and self-represented parties have been permitted to participate in hearings. Unlike forms and general information and opinions, for which a person can look to resources other than lawyers, in a hearing a person must have a lawyer or go it alone. Advocacy, like advice and counsel specific to the client's particular circumstances, is at the heart of what lawyers do. Eliciting testimony, selecting evidence, applying the law to the facts presented and weaving them together in a cogent argument should be reserved for a licensed lawyer.

(e) HOW DO PEOPLE LIVE WITHIN THE RESOLUTION OF THEIR LEGAL ISSUE?

There is no program for explaining to a self-represented party the outcomes, rights and responsibilities encompassed in a court order. An individual might turn to a family member or to a trusted friend or colleague to provide an explanation of a written order. Or a volunteer attorney at a workshop or clinic might explain an order.

The general opinions or recommendations that Rule 14-802(c)(2) permits at the beginning of a consultation should be just as permissible at the end of litigation. In the beginning, a paraprofessional might provide information and opinions to a client about relevant laws and procedures. And, if there is an approved form, the paraprofessional might advise about the forms and the procedures to achieve the client's particular objectives. At the end of the process, a paraprofessional might do the same regarding the order that the court has just entered: advise the client about his or her rights and obligations under that order; how to enforce the order; whether the order can be modified, under what circumstances and how to do it; whether the order must be served on anyone else; and so forth.

(f) HOW DO PEOPLE FIND A LAWYER?

The Utah State Bar's directory of lawyers is essentially a listing of lawyers with contact information. Unless one is looking for a particular lawyer, it is not effective. We urge the Bar to make the improvements we recommend in the section on the online lawyer directory.

Someone in need of a lawyer might get lucky with a Google search with the relevant search terms. Many people will ask family, friends or colleagues for suggestions. Telephone directories are still around.

A major component of a paraprofessional practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. A paraprofessional should be authorized and encouraged to refer a client to a lawyer if a needed service is beyond the person's professional competence or is not authorized. Finding competent counsel is difficult and stressful; a paraprofessional can help.

(6) CHALLENGES TO ESTABLISHING A PARAPROFESSIONAL PROGRAM

According to a survey conducted by the futures commission of the Utah State Bar, 60% of the responding lawyers either disagreed or strongly disagreed with a proposal to explore limited licenses for certain practice areas (with 41% "strongly" disagreeing).[11] One barrier to establishing a paraprofessional program, therefore, may be opposition from lawyers. However, the nature and magnitude of the opposition may depend on program design. A fine-tuned program, which is clear about training, certification and scope of practice, could minimize opposition.

Also, we encourage lawyers, as they consider our analysis and proposal, to embrace their role as public citizens:

> A lawyer is ... a public citizen having special responsibility for the quality of justice. .... As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.
>
> As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.
>
> A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate

---

[11] Report and Recommendations on the Future of Legal Services in Utah. Employer's survey, page 19. (https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission_Employers.pdf; http://perma.cc/KWK9-A444).

> legal assistance and therefore, all lawyers should devote professional time and resources and use civic influence in their behalf to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.
>
> ....
>
> The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the Bar.[12]

General opposition is not the only barrier to establishing a paraprofessional program:

Barrier: Lack of rural markets. The American Bar Association task force on the future of legal education identified a paraprofessional program as a method of placing legal services in rural areas.[13] But, the argument goes, if there is no viable market for lawyers in rural areas, there may be no viable market for paraprofessionals either.

Responses and solutions. Paraprofessional businesses might be able to exist in areas for which there is no viable market for law firms if paraprofessionals have less educational debt, lower overhead and lower income expectations.

The option for a lawyer to practice with a paraprofessional may also make a rural practice more viable for both if the combined practice allocates matters more efficiently according to each professional's specified authority, allowing services to be provided at lower costs.

Ultimately, our role is to recommend whether and under what conditions it is proper for a paraprofessional to engage in the limited practice of law. We are not able to conduct market research on the viability of rural or other markets. Paraprofessionals will have to test what markets are viable and how. As with any form of free enterprise, some business

---

[12] Preamble: A Lawyer's Responsibilities. Rules of Professional Conduct.

[13] Report and Recommendations American Bar Association Task Force on the Future of Legal Education, at pages 13 and 33. (http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf; http://perma.cc/N6XQ-2CX6).

models will work, and others will not, and market entrants must adapt and innovate accordingly.

Barrier: Nature of clientele and markets. The rates for a successful paraprofessional may price some clients out of the market just as effectively as the rates for a successful lawyer. Some question whether paraprofessionals will be able to charge less than the modest means program[14] already administered by the Utah State Bar. Legal services in two of the recommended practice areas—eviction and debt collection—will be especially difficult because the respondents who need assistance do not have the money to pay for it.

Responses and solutions. As with any service, a paraprofessional likely will start with lower prices and grow to serve more sophisticated clients willing to pay more as the paraprofessional gains experience. Those paraprofessionals might retain their existing clients, or other providers might enter the market to fill any gaps.

Utah enjoys a superb modest means program that charges a $25 finder's fee and $50 to $75 per hour based on the client's income and assets. That service can continue to grow, but the section on practice areas of greatest demand shows that lawyers fill only a fraction of the existing gap in legal services, and a multi-faceted approach is appropriate.

Barrier: Gaps in representation. If a paraprofessional represents a client, but the case develops beyond the scope of his or her competence or license to practice, the client will be disadvantaged while seeking a lawyer or navigating the rest of the case without representation.

Responses and solutions. A paraprofessional does not have to abandon the client. For matters that are too complex based on the paraprofessional's judgment or for matters beyond the scope of the limited license, a paraprofessional can refer the client to a specific lawyer or to several lawyers from which to choose. A paraprofessional who practices with a lawyer can handle matters within his or her competence and authority and call in the lawyer-colleague when appropriate.

Additionally, a licensed paralegal practitioner, as we have recommended it, will necessarily be a paralegal, and will continue to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed

[14] (https://www.utahbar.org/modest-means-lawyer-referral-program/; http://perma.cc/8RGQ-J3JG).

paralegal practitioner can provide that service under a lawyer's supervision and license, much as they have for decades.

All of these referral methods ensure reasonable continuity of representation. Plus, if a client can enter the legal services market through a lower-priced paraprofessional, the client might seek the further assistance of a lawyer when the paraprofessional's representation must end, making available to lawyers clients they would not otherwise have.

This is similar to what occurs when a nurse practitioner refers a patient to a physician, when a general physician refers a patient to a specialist, or when an accountant refers a client to a tax attorney. Inevitably there is some delay, and some transitions are smoother than others, but the client is not left to sink or swim.

Barrier: Service quality. The quality of legal services may decline. Practicing law requires a particular legal education, and a JD provides the public with the value of legal competence. A legal education teaches numerous skills and attitudes that are an instrumental part of the practice of law. Among others, these skills include professionalism, communication and listening, research techniques, task organization and management, creative thinking, and inference-based analysis. These skills are taught and reinforced throughout three years of law school.

Responses and solutions. The level of education and other qualification requirements should match the nature of the authorized services. At a minimum, education should include concepts of professionalism, responsibility, civility and ethics similar to those conveyed to lawyers. Paraprofessionals must also be educated to understand the line between authorized and unauthorized services—perhaps with a clear admonition to err on the side of referring a client to a lawyer or to seek an opinion from the appropriate licensing authority in close cases. Paraprofessionals must also acquire the judgment necessary to understand when a task is beyond their competence, even if technically authorized.

Barrier: Administrative costs. A paraprofessional program will have administrative costs for regulating a new class of practitioners.

Responses and solutions. Licensing and other regulations are necessary, and clearly will result in costs to ensure consumer protection and to ensure that paraprofessionals are properly educated and limiting their practice to authorized services. The best way to minimize additional costs is to combine paraprofessional licensing within the existing system for licensing attorneys.

Although parallel licensing should minimize additional costs by building on the existing infrastructure, the income and expense for licensing lawyers must be kept separate from the income and expense for licensing paraprofessionals. This presents a significant chicken-and-egg problem: how to initiate licensing and regulation of a fledgling profession without any current dues-paying members.

Barrier: Oversaturated legal market. By some measures, the legal market is already oversaturated, and the addition of paraprofessionals engaging in the practice of law will stress the market even more.

Responses and solutions. This argument seems belied by the large number of self-represented parties in some types of litigation. To the extent that the legal market is saturated, it is that segment of the market that can afford to pay a lawyer for full representation.

(7) PROGRAM EVALUATION

Dr. Clark's white paper recommends planning the evaluation up front as a way to focus on the characteristics of a paraprofessional program that are intended to add value and on how those characteristics will help achieve the intended goals.[15] The regulatory balance is between increasing access to justice and protecting the public against incompetent assistance.

To achieve that balance we consider the appropriateness, effectiveness and sustainability of the role.

(a) APPROPRIATENESS

Dr. Clarke defines appropriateness as: (1) a discrete set of services that will make a significant difference in access to justice; and (2) the knowledge required to competently perform those services. If a paraprofessional program is to make a difference, the authorized services must fill the gaps in access.

(b) EFFECTIVENESS

Effectiveness is the measure of competence and use. If the paraprofessionals are not sufficiently educated to perform competently, they will not be effective. But competence does not necessarily ensure significant use. If paraprofessionals are competent but their services are not used for other reasons, then access to justice is not improved.

---

[15] Clarke, *Id*. at pages 4-5.

Possible secondary measures of effectiveness include: reduced burden on courts from self-represented litigants; improvements in procedural justice; improvements in litigant understanding; increased use of courts to address legal problems; and improved outcomes, such as reduced costs, greater satisfaction and more timely resolutions.

To be proven effective a paraprofessional program must achieve competence and use, but to measure the impact of the new role on secondary goals, benchmarks must be realistically chosen. For example, if the realistic alternative for most litigants is no assistance, then that is a better comparison than with a lawyer that the litigant would never have retained in the first place.

(c) SUSTAINABILITY

Sustainability of the role is a function of perceived legitimacy and economic viability. Paraprofessionals may be competent, but they must be perceived to be competent if clients are going to use them. And clients will not take advantage of a paraprofessional, no matter how competent, unless they perceive value for cost.

The new role may not be sustainable for a variety of reasons: key support may come from a few individuals, who then move on; temporary funding subsidies may dwindle or disappear; market-based programs may fail to find a market; regulatory and education strategies may prove to be too costly.

(d) MEASUREMENTS

Program goals: Increase access to legal remedies. Protect consumers.

Participant's role: See the section on recommended authority.

Key stakeholders: A successful program will need participation by:

- Clients/Public
- Lawyers in the specified practice areas
- Bar administration
- Paraprofessionals in the specified practice areas
- Paraprofessional administration
- Higher education
- District court judges
- District court staff
- Self-help center lawyers
- Supreme court

Appropriateness. Determine whether the specified authority of a paraprofessional will make a significant difference in access to legal remedies. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to enable him or her to perform those tasks competently. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to protect clients.

Effectiveness. Determine whether paraprofessionals are indeed competently performing their authorized tasks. Determine whether paraprofessionals are being used. Identify and measure any secondary goals of key stakeholders.

Sustainability. Determine whether a market-based solution in which paraprofessional services are paid for by clients is durable. Determine whether the education, licensing and regulation of paraprofessionals in which the cost is paid for by the paraprofessional is durable. Determine whether the key stakeholders, particularly the paraprofessionals and their clients, perceive value.

Measuring a program such as this is very difficult, but these measurements represent the evidence on which evidenced-based practices are based.

(8) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES

Utah is not the first state to venture down this road, but there are only a handful of examples from which to draw experience. We have identified programs in six states in which a person may provide some legal services directly to a client for pay without the supervision of a lawyer. In addition we have identified three states that are, like Utah, considering whether to start a program. California licenses document preparers and is considering whether to license technicians. We have not included the New York City court navigator program because, although innovative, it is a volunteer program. For a summary of the key characteristics of programs of other states, see the section on characteristics of limited-licensing in other states.

(9) PARAPROFESSIONALS IN UTAH

(a) CURRENT UTAH AUTHORITY

When comparing the Utah rules governing paralegals and the practice of law with the statutes and rules of the states with paraprofessional programs of some kind, one is struck by the liberality of the Utah rules. In Utah there are no minimum education or experience requirements for a paralegal. “A paralegal is a person qualified through education, training, or

work experience...." There is no examination, no licensing, no application and approval. Yet a paralegal may do anything a lawyer might do: "the performance ... of ... substantive legal work, which ... requires a sufficient knowledge of legal concepts that ... [an] attorney would [otherwise] perform." There are conditions on what a paralegal may do, but no limits. The paralegal must produce "work directly for a lawyer for which a lawyer is accountable," or the paralegal must be under the "ultimate direction and supervision" of a lawyer, and the work must be "specifically delegated."

The definition of the practice of law excludes a long list of services. Again, there are no regulations governing the qualification or credentialing of non-lawyers who provide these services—except for regulations that govern other professions that provide the services.

Utah, then, has a flexible base on which to build a paraprofessional program that other states may not have.

(b) OTHER STATE MODELS

The American Bar Association Task Force on the Future of Legal Education viewed Washington's efforts as a positive step toward achieving the goal of increasing access to legal services through a paraprofessional program.[16] Although this may be true, and, while the Washington experience might provide useful lessons for a nascent Utah program, it appears that Washington's program is not the right fit for Utah.

First, the education and experience requirements of Washington's program are so arduous that it remains to be seen whether LLLTs can provide services at rates significantly less than those provided by lawyers. Second, some of the restrictions in the Washington program do not dovetail with current Utah law. For example, a Washington LLLT may not represent a client in negotiations. In Utah, anyone may do so, provided the negotiations are mediated.

Similarly, we can learn lessons from the program in other states, but neither are they exactly suitable for Utah. Paraprofessionals in the programs of states other than Washington are essentially document preparers who perhaps can discuss general legal principles but may not apply those principles to the facts of the case and may not give advice. In some states the document preparer cannot even advise which form to use. In most states, they cannot file the documents that they prepare. The authorized

[16] Future of Legal Education, *Id*. at pages 14 and 25.

services are disjointed, requiring a client to employ a lawyer for parts of tasks that can otherwise be performed by a paraprofessional.

(10) RECOMMENDATIONS

The more common example of paraprofessionals in the limited practice of law is the document preparer. An Oregon task force has recommended a program similar to the Washington LLLT program, but the Washington program is the only extant example of a paraprofessional authorized to offer services beyond document preparation.

The liberality of Utah's current rules point to a program of services greater than just document preparation. Establishing a program of document preparers would professionalize the system we currently have, in which unregulated document preparers are currently engaged in the unauthorized practice of law by charging a fee to prepare a court-approved form. Or they avoid the unauthorized practice of law by preparing forms for free, perhaps after selling the blank form to the client, and perhaps without the education and experience to do a good job.

Professionalizing those services would improve the quality of the documents being filed and would provide a better service to the client, but there is no way to know whether unregulated document preparers would spend the time and money to become licensed document preparers. And, if Dr. Clarke is correct in his opinion that smart systems will eventually replace or at least limit the use of document preparers, then we need to take a bolder step.

(a) RECOMMENDED TITLE

Licensed Paralegal Practitioner

(b) RECOMMENDED PRACTICE AREAS

Recognizing that implementing all practice areas simultaneously may be beyond human capacity, and recognizing the differing impact of different civil justice situations on people's lives, we recommend developing the approval, education and licensing for practice areas in the following order:

(1) temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change;
(2) eviction—a licensed paralegal practitioner should not represent corporate clients; and
(3) debt collection—a licensed paralegal practitioner should not represent corporate clients.

If experience shows a practice area in which lawyers are not representing parties, the supreme court should consider appointing an appropriate group to examine that area and recommend:

- whether to authorize it as an approved practice area;
- whether any of the then-existing authority of a licensed paralegal practitioner would be inappropriate; and
- an appropriate course of instruction for the practice area.

(c) RECOMMENDED AUTHORITY

The licensed paralegal practitioner's authorized services will necessarily fall somewhere between these two extremes: the first of which anyone may perform under Rule 14-802; and the second only a licensed lawyer.

- Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
- Informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

There is not much difference between the meaning of opinions and recommendations on the one hand and of counseling and advising on the other. So the distinguishing feature of the "practice of law" appears to be whether the opinions, recommendations, counsel or advice relate to the client's particular circumstances.

We have tried to outline the discrete tasks within an approved practice area that are appropriate for a licensed paralegal practitioner and that the client will see as valuable. And we have tried to avoid requiring a lawyer to complete discrete parts of those tasks. There remain parts of the litigation process, even within an approved practice area, within the sole province of a lawyer—drafting non-form pleadings, discovery, subpoenas, presentation of evidence and advocacy are examples—but a client should be able to rely on a licensed paralegal practitioner to accomplish an entire authorized task without a lawyer's assistance for parts of it.

(i) INTAKE, CLIENT COUNSELING AND LAWYER REFERRAL

All of the jurisdictions prohibit paraprofessionals from practicing beyond their license, but none appear to expressly require referral to a

lawyer. Perhaps it is simply presumed. A major component of a licensed paralegal practitioner practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. Finding competent counsel is difficult and stressful; a client's licensed paralegal practitioner is in a better position than anyone to help. The obligation to practice within one's competence and license is better expressed as a rule of professional conduct than as a description of authority.

None of the jurisdictions expressly authorize client interviews, although Washington permits a LLLT to "obtain facts." Obviously some type of client interview is necessary in any business relationship, and in an approved practice area the licensed paralegal practitioner should be authorized to interview the client to understand the client's objectives and to obtain the facts relevant to achieving that objective.

Unless there is a court-approved form to achieve the client's objective, the licensed paralegal practitioner's authority in client counseling should be limited to general information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies.

(ii) FORMS

If there is a court-approved form to achieve the client's objective in an approved practice area, a licensed paralegal practitioner should have extensive authority to:

- advise which form to use;
- advise how to complete the form;
- make the entries on behalf of the client;
- sign, file and complete service of the form;
- obtain, explain and file any necessary supporting documents; and
- advise about the anticipated course of the proceedings by which the court will decide the matter.

We did not reach agreement on whether a licensed paralegal practitioner should sign or otherwise acknowledge a form ghost-written but not filed by him or her. Lawyers who draft but do not file documents for a client do not have to acknowledge the document, and this encourages this discrete task. But this program is new, and perhaps the court needs to know when a form has been prepared by a licensed paralegal practitioner. If the supreme court decides that a ghost-written form should be signed or acknowledged by a licensed paralegal practitioner, it should make that an express requirement.

The judicial council should continue its work with the committee on resources for self-represented parties to develop new forms appropriate for

approved practice areas and to improve the forms that we already have. The council and committee should also continue to publish instructions for the forms and information about the facts and procedures relevant to the forms.

Except for a settlement agreement memorializing negotiations in which the licensed paralegal practitioner represented the client, a licensed paralegal practitioner should not be authorized to prepare a pleading or other paper for which there is no court-approved form.

(iii) INTERACTION WITH ANOTHER PARTY

The licensed paralegal practitioner should be authorized to communicate with another party or the party's representative if the communication relates to the matter raised by the form.

The licensed paralegal practitioner should be authorized to represent a client in mediated negotiations. This is co-extensive with a service that is currently defined as outside the practice of law under Rule 14-802.

As noted earlier, we differ on whether a licensed paralegal practitioner should be authorized to represent a client in unmediated negotiations. If the supreme court decides to authorize a licensed paralegal practitioner to do so, it should be permitted only in an approved practice area, but it should include communicating the position of the client to the other party and vice versa, outside of formal negotiation sessions.

In an approved practice area the licensed paralegal practitioner should be authorized to explain to the client the documents of another party. If the paralegal is to represent the client during negotiations, the client needs to understand the other party's case.

In an approved practice area the licensed paralegal practitioner should be authorized to prepare a written settlement agreement in conformity with the negotiated agreement. If an order form exists, a licensed paralegal practitioner should be authorized to complete the form in conformity with the settlement agreement.

(iv) POST-LITIGATION ROLE

In an approved practice area the licensed paralegal practitioner should be authorized to counsel and advise a client about how a court order affects the client's rights and obligations. This would authorize for the litigation's outcome the same authority we recommend for client counseling at the beginning: If there is a form—in this case the court's order—the licensed paralegal practitioner should be authorized to give counsel and advice about the order specific to the client's particular circumstances.

(v) SERVICES AS A PARALEGAL

A licensed paralegal practitioner, as we have recommended qualifying for it, will necessarily be a paralegal, and continues to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed paralegal practitioner is already authorized to provide that service under a lawyer's supervision and license.

(vi) FUTURE EXPERIENCE

If experience shows additional tasks that would be valuable to a client and appropriate for a licensed paralegal practitioner—or if experience shows that any of the tasks we have proposed are inappropriate—the supreme court should consider appointing an appropriate group to examine the tasks and recommend whether to add to or remove from the authorized list.

(d) RECOMMENDED EDUCATION

Beyond basic paralegal education, Washington requires that its legal technicians complete 15 credit hours (or 112 hours of instruction) of specialized education in order to practice in an approved practice area. The recommended model for Oregon is similar. By comparison, graduation from the University of Utah S.J. Quinney College of Law requires 88 credit hours. Washington also requires that the specialized education be obtained through a law school, and the University of Washington School of Law in Seattle is the only school to offer the curriculum. The courses are available through remote simultaneous participation.

At the other end of the spectrum, Nevada does not have any minimum education requirements for its document preparers, and Louisiana requires only a high school diploma or GED for its notaries public.

We recommend that the Utah licensed paralegal practitioner be authorized to provide a range of services that require independent judgment. The minimum education requirements must be sufficient to qualify those individuals to perform the services competently. We recommend a concentration of specialized classes in each of the approved practice areas, and we recommend delivery through the higher education infrastructure.

Specifically, we recommend that the minimum education of a licensed paralegal practitioner be:

- a Doctor of Jurisprudence degree from an ABA-approved law school; or
- an associate's degree with a paralegal or legal assistant certificate from a program approved by the ABA plus:
  - successful completion of the paralegal certification through the National Association of Legal Assistant's Certified Paralegal/Certified Legal Assistant exam[17];
  - successful completion of a course of instruction for a practice area (content to be determined based on the approved practice area); and
  - experience working as a paralegal under the supervision of a lawyer or through internships, clinics or other means for acquiring practical experience.

Many Utah paralegals already have a bachelor's or associate's degree and a paralegal certificate. Most of them have been working under the supervision of a lawyer for years. Several of those have already successfully completed the NALA CP/CLA exam. For this last group, all that remains is to successfully complete the yet-to-be-created specialized course work in an approved practice area.

We recommend that a JD degree be one of two methods for meeting the education requirements of a licensed paralegal practitioner, but the candidate under either method would be required to meet any licensing requirements.

Since the range of authorized tasks that we recommend depends so heavily of the existence of a form, we recommend that the advanced instruction include intense work with the forms in a practice area, the objective that each form is intended to achieve, and the facts and procedures relevant to that objective.

(e) RECOMMENDED LICENSING AND OTHER REGULATIONS

(i) ADMINISTRATION

Louisiana and Nevada administer their document preparer programs in the executive department through the secretary of state. California administers its document preparer program in the executive department through the county clerks of the several counties. Under the Utah Constitution, governance of the practice of law must be under the authority

[17] http://www.nala.org/examdesc.aspx; http://perma.cc/UET2-22LA.

of the supreme court. Arizona administers its document preparer program directly by the supreme court, but we do not recommend this model.

We recommend that a licensed paralegal practitioner program be administered through the Utah State Bar, as is done for the Washington LLLT program. The revenue from lawyers should not be used to pay the costs of administering a paraprofessional program, and vice-versa.

(ii) MINIMUM REQUIREMENTS

The purpose of regulations should be to protect the public. What protections do we rely on when employing a lawyer? Education; examination; character and fitness review; mentored experience; continuing education; compliance with Rules of Professional Conduct; a complaint and discipline process; and the Lawyer's Fund for Client Protection. In addition, lawyers must comply with two administrative regulations: an application fee; and a licensing fee. The minimum requirements of a licensed paralegal practitioner should not be regulated beyond these without good reason.

Based on the requirements for paraprofessionals in other states and for lawyers in Utah, we recommend that regulations in the following areas be considered.

- Application and fee
- Character and fitness review
- Utah-specific licensing exam in the approved practice areas
- Mentored experience
- Appointment by the supreme court
- Oath of office
- Financial responsibility (bond or professional liability insurance)
- IOLTA account
- Annual licensing fee
- CLE
- Rules of professional conduct
- Complaint and discipline process

The supreme court might also consider establishing the paralegal division as a regulatory board, instead of using the board of bar commissioners for that role.

State and local business regulations would apply to a licensed paralegal practitioner's firm as to any other form of business.

(iii) LEGAL RELATIONSHIP WITH CLIENT

In an approved practice area and within the approved tasks, a licensed paralegal practitioner should have a relationship with his or her client similar to that of a lawyer.

- Fiduciary duties
- Privileged communications
- Standards of care

(11) OTHER STRATEGIES

Although authorizing qualified non-lawyers to engage in the practice of law in limited circumstances draws the most attention, it was not the limit of our charge. We offer five other strategies to help self-represented parties, and we hope that these other strategies are not put on hold while a program of licensed paralegal practitioners is being built.

(a) DISCRETE LEGAL SERVICES

Our focus on discrete services by licensed paralegal practitioners reveals the benefits to clients of discrete services by lawyers. The futures commission of the Utah State Bar recommends increasing "the use of discrete task representation and fixed fee pricing by (1) marketing the availability of "unbundling," (2) educating lawyers and courts on best practices for implementing these approaches and (3) establishing an "unbundled" section for the Bar with lawyers who are willing to help clients on a fee-per-task, limited scope basis."[18] We fully endorse these recommendations and urge the Bar to promptly implement them.

Because discrete tasks have an identifiable beginning and end, lawyers can offer a fixed price that is less than the unknown cost of full representation. This is a tremendous benefit to clients who in every other purchase of goods or services in their lives know or have a reasonably accurate estimate of the bottom line.

Offering discrete legal services is the only way a lawyer or licensed paralegal practitioner will reach a party who has decided for reasons other than cost to prosecute or defend a case without representation. Perhaps the party wants more control; perhaps the party believes he or she can perform the tasks more quickly or more professionally or will take greater care because of the personal connection to the litigation. Whatever the reason,

---

[18] Future of Legal Services in Utah, *Id.* at page 5.

the party does not want full representation, and no seller will succeed by offering something the buyer does not want.

Lawyers are missing a large population of clients because not many lawyers offer discrete services, or those who do have not effectively advertised the services. The bar should do all that it can to support this business model. If the rules regulating discrete legal services are not sufficiently explicit, they should be made so. If the rules interfere with effectively delivering discrete legal services, the barriers should be removed.

(b) ONLINE LAWYER DIRECTORY

The futures commission of the Utah State Bar recommends "a robust online lawyer referral directory that is easily available to the public." Building on this, the commission recommends "a consumer-focused website which, building on the online directory of lawyers, will become the key clearinghouse for clients in need of legal assistance."[19]

A robust, bar-sponsored directory would help potential clients find lawyers and other legal services—something most lawyers should support—and it would be invaluable to the lawyers of the self-help center, who quickly see the need for full representation or a discrete legal service, but are prohibited from referring clients to a particular lawyer. Rarely does a bar commission find a product that simultaneously serves both its lawyer constituency and its public constituency. The recommended directory is that product.

The bar is examining implementation of the recommendations in the form of a "portal," but the product to be delivered under that rubric is not well defined. We recommend that the bar begin implementation with a portal to what consumers need most—and what would most benefit lawyers—a portal to legal services. From the perspective of the potential client, this basic but robust referral system should include an online method of filtering and sorting legal services by:

- nature of the "civil justice situation" framed from the client's perspective;
- location of the client; location of the dispute;
- languages spoken by the provider and other information meant to overcome barriers to access;
- license (lawyer or licensed paralegal practitioner);

---

[19] Future of Legal Services in Utah, *Id*. at page 5.

- price, including qualification for pro bono and modest means;
- discrete services offered, including information, advice, document preparation, document review, coaching, representation at a hearing; and
- any other criteria that may be relevant to a potential client.

The effort begins with accumulating data that the bar does not now have: the information about individual lawyers, law firms and legal services that the application would use to filter and sort legal services based on the client's answers to the questions just posed. This directory should be the only bar-sanctioned directory, and it should be based on the most current and accurate information available. It should provide to lawyers a simple interface to describe the services they offer, and it should provide to the public a simple interface to shop for those services. We recommend the supreme court do what it can to assist the board of bar commissioners in a campaign to gather this information. We hope lawyers will quickly see an opportunity for advertising their services to clients.

The International Space Station is larger than a six-bedroom house.[20] The initial platform, completed in December, 1998, was about the size of a one bedroom apartment.[21] If the bar's directory expands—to include expert systems, intelligent checklists, business process analysis, document assembly, document translation, electronic filing, and all of the other terms used to describe portals—all well and good, but that also might take almost 20 years to build. The best start is the basic, robust referral system recommended by the futures commission.

The initial platform cannot be built too soon, and it will be put to good use while the rest of the modules are being planned, designed and built. The bar should advertise the directory's availability to the public in general, and several times a day court clerks, libraries and community organizations from around the state and the lawyers of the self-help center will refer people to it. The court website will link to the directory, and the self-help center will include information about it in their work with public libraries,

---

[20] NASA (https://www.nasa.gov/mission_pages/station/main/onthestation/facts_and_figures.html; http://perma.cc/D75W-J3UP).

[21] Approximately 9,700 cubic feet, the size of the two initial modules, Zarya https://en.wikipedia.org/wiki/Zarya and Unity https://en.wikipedia.org/wiki/Unity_(ISS_module).

community groups and other volunteers who in turn work with members of their communities in need of various legal services.

(c) ONLINE DISPUTE RESOLUTION

The judicial council is pursuing online dispute resolution in small claims litigation. Although the conceptual design is of a computer-assisted method of dispute resolution by humans, rather than the intelligent-system method of automated resolution recommended by Dr. Clarke's white paper, it represents a significant opportunity for more convenient and less costly access to the court. If successful, the lessons learned can be applied in other types of litigation, including interlocutory decisions during litigation.

(d) ASSISTED RESOLUTION OF CASES INVOLVING SELF-REPRESENTED PARTIES

The basic features for assisted resolution of litigation involving self-represented parties are: get the parties into the courthouse; provide them with an opportunity to explain their circumstances and their preferred outcomes; and then have the resources in place to reach and finalize an acceptable outcome. Alaska, California, Colorado and Minnesota have experienced good results with their programs.

In cases involving self-represented parties, Alaska conducts a hearing, early in the life of the case, at which attorneys are available to complete documents if a case is resolved. Only 2% of parties failed to appear at the hearings, 80% of new cases fully resolved with only one hearing, and 77% of modifications resolved with only one hearing. Only 5% of resolved cases required a further hearing within the next year.

Colorado and Minnesota have similar programs in which self-represented parties have a conference with a judge early in the case. Both states include an exchange of initial disclosures before the conference.

In Minnesota, an "evaluator" meets with the parties before they meet with the judge to try to mediate a settlement. If the case does not settle, the parties meet with the judge who tries to mediate a settlement or establishes deadlines for moving the case toward a litigated resolution. In Colorado 34% of cases fully resolved with stipulations and another 25% had no further hearings. Cases within the Colorado program resolved about 2 months more quickly than other similar cases.

Rule of Civil Procedure 16 provides the court with sufficient authority to structure a conference in just about any way that makes sense for this purpose. The authority exists; all that is needed is someone to plan, design,

organize and implement a program and to examine whether the program is achieving its goals.

Utah has a program of assisted resolution of family law cases, but the conference and assistance occur toward the end of case, rather than the beginning. The Utah program is currently operating with court commissioners in the Third District Court, and there are plans to implement it in the Fourth District Court.

In the Utah program the case management system screens family law cases for cases in which there has been no activity for 180 days. Our rules permit these cases to be dismissed without prejudice, provided the parties are given an opportunity to show cause why the case should not be dismissed. The court commissioners schedule a special calendar consisting only of cases with self-represented parties. The commissioners also schedule other law and motion matters involving only self-represented parties on this calendar. Volunteer attorneys are available at the hearing, as are volunteer mediators and self-help center lawyers, who provide staff support. All of these people work with the parties to resolve the matter or, if the matter is not settled, to move the case to the next steps in the process.

The Third District Court has a similar program for debt collection cases, in which volunteer lawyers represent a self-represented defendant. In many cases the volunteer lawyers are able to negotiate a settlement or a payment plan with the plaintiff.

If an opportunity for assisted resolution were provided early in the case, instead of after 6 months of inactivity, it would be a substantial improvement. Or experience may show that there remains a purpose to providing an opportunity for assisted resolution rather than dismissal.

We recommend that the judicial council establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties. The council should consider the features of the Alaska, California, Colorado and Minnesota programs, which include mutual initial disclosures, a conference early in the case with defined objectives, and the resources—mediators, lawyers, judges, commissioners and staff—to reach and finalize an outcome.

As part of the pilot program, the council should address a practical problem with the OCAP application. OCAP allows a party to prepare the appropriate forms for a divorce, but it does not include the capability to complete any particular form. This limitation hampers the self-help center lawyers who staff the calendar and prepare the necessary documents. The judicial council should work with the OCAP board and staff to develop this

capability, or it should work with the committee of resources for self-represented parties to develop and approve the necessary stand-alone forms.

(e) SELF-HELP CENTER

The self-help center is a human portal of sorts, providing information and assistance, especially with forms. The self-help center would be assisted greatly by improving the qualifications of those in the community who already provide general information, opinions or recommendations and assistance completing court-approved forms.

Improving those qualifications would professionalize the services already being offered. The recommendation that follows is for consideration by the judicial council as well as by the supreme court, because, although the self-help center is ultimately the responsibility of the supreme court, and the recommendations will leverage the self-help center's resources by training others to provide assistance, the recommendations will increase the work of the self-help center lawyers, and the judicial council ultimately must agree that the additional cost is a sound use of public money.

- Instruct court staff, public library staff, community and faith-based groups and other volunteers. The course of instruction would be offered for free. The participants would be certified upon completion of the coursework, but would not be permitted to charge for their services.
- Instruct in English and Spanish.
- Maintain a roster of certified providers.
- Provide virtual support to the providers.
- Continue to develop and review simple and clear forms and informational webpages.
- Explore other information media.
- Facilitate the translation of webpages, forms and any new medium into Spanish.

(12) IMPLEMENTATION

(a) STEERING COMMITTEE

We have outlined a supply-side model to meet the gaps in access to justice. We have developed as much detail as possible in the time available. But we recognize that this report remains only a blueprint. If the supreme court decides to move forward with this model, we recommend that it appoint a steering committee to identify, plan, develop and implement the

thousands of details necessary for the blueprint to become a reality. The committee should include representatives or input from:

- lawyers experienced in the practice areas;
- community organizations;
- the paralegal division;
- higher education administration;
- bar administration and leadership;
- court administration and leadership;
- judges and court commissioners;
- the self-help center;
- the office of professional conduct;
- the committee on rules of professional conduct; and
- others as needed.

(b) QUESTIONS FOR CONSIDERATION

We have identified a handful of questions for a steering committee, but the committee, as it investigates finer and finer details, will encounter many more.

- Should a licensed paralegal practitioner be required to sign or otherwise acknowledge a form prepared but not filed by the licensed paralegal practitioner?
- Should a licensed paralegal practitioner be authorized to represent a client in non-mediated negotiations?
- Should a licensed paralegal practitioner be authorized to accept service on behalf of a client?
- Should guardianship of a minor be an authorized practice area?
- Must a JD degree be from an ABA approved law school to satisfy the education requirement of a licensed paralegal practitioner?[22]
- Are there equivalent credentials from other states or nations that should satisfy the education requirement?
- Should any of the education or experience requirements of a licensed paralegal practitioner be waived for current paralegals? Which requirements should be waived? What should be the

[22] We recommend that an ABA approved law school be sufficient, but is it necessary? See the section on recommended education.

minimum requirements to qualify for the waiver? For how long should waiver be available?

- What should be the data points and data collection methods for measuring the success of the program?
- What should the content of the advanced course work and examination in a practice area consist of?
- What should the specific rules for the regulation, administration and licensing of the profession consist of?

Bar regulation, administration and licensing may serve as a model from which to start, but we urge the steering committee not to simply copy and paste. Detailed investigation may reveal legitimate differences between the licensing and regulation of licensed paralegal practitioners and of lawyers. Perhaps more important, this is an opportunity to think afresh about the issues and to transfer lessons learned back to the licensing and regulation lawyers.

(13) TASK FORCE MEMBERS AND STAFF

This report would not have been possible without the generous contribution of time, experience and judgment by the following people:

Dean Robert W. Adler
University of Utah
S.J. Quinney College of Law
Workgroup Chair

Mr. Nathan D. Alder
Christensen & Jensen

Ms. Elena Bensor-Slyter
Community Representative

Hon. James Brady
Fourth District Court

Ms. Mary Jane Ciccarello
Self-Help Center
Utah State Courts
Workgroup Chair

Ms. Carol Sue Crismon
Utah Legal Services

Hon. Deno G. Himonas
Utah Supreme Court
Committee Chair

Ms. Dixie A. Jackson
Law Office Of Dixie A. Jackson, LLC

Rep. Brian S. King
Utah House of Representatives

Mr. John R. Lund
Parsons Behle & Latimer

Ms. Lori W. Nelson
Jones Waldo Holbrook & McDonough

Commissioner Joanna B. Sagers
Third District Court

Ms. Jacey Skinner
Office of the Governor

Ms. Angelina Tsu
Zions Management Services Corp

Sen. Stephen H. Urquhart
Utah Senate

Ms. Jody R. Gonzales
Administrative Office of the Courts, Staff

Mr. Timothy M. Shea
Utah Supreme Court, Staff

(14) DRAFT RULES

Rule 14-802. Authorization to practice law.

(a) Except as set forth in ~~subsection~~ paragraphs (c) ~~of this rule~~ and (d), only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

(b)(2) The "law" is the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person's rights, duties, constraints and freedoms.

(b)(3) "Person" includes the plural as well as the singular and legal entities as well as natural persons.

(b)(4) "Licensed paralegal practitioner" means a natural person qualified and licensed under the rules governing the practice of law.

(b)(5) "Practice area" means litigation in the district court in:

(b)(5)(A) temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change;

(b)(5)(B) forcible entry and detainer; and

(b)(5)(C) debt collection.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(c)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

(d) Within a practice area for which the licensed paralegal practitioner qualifies, a licensed paralegal practitioner may represent the interests of a natural person who is not represented by a lawyer by:

(d)(1) establishing a contractual relationship with the client;

(d)(2) interviewing the client to understand the client's objectives and obtaining facts relevant to achieving that objective;

(d)(3) completing a form approved by the judicial council or board of district court judges;

(d)(4) informing, counseling, advising and assisting with which form to use and how to complete the form;

(d)(5) signing, filing and completing service of the form;

(d)(6) obtaining, explaining and filing any document needed to support the form;

(d)(7) reviewing documents of another party and explaining them;

(d)(8) informing, counseling and advising about the anticipated course of proceedings by which the court will resolve the matter;

(d)(9) informing, counseling, advising, assisting and advocating for the client in mediated negotiations;

(d)(10) drafting, signing, filing and completing service of a written settlement agreement in conformity with the negotiated agreement;

(d)(11) communicating with another party or the party's representative; and

(d)(12) informing, counseling and advising about a court order that affects the client's rights and obligations.

(15) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES

(a) ARIZONA

Status. Program in place since July 1, 2003.

Title. Legal document preparer.

Minimum education.

Individual:

(1) A high school diploma or GED and two years of law-related experience as a court employee or under the supervision of a lawyer or a certified legal document preparer.
(2) A certificate of completion from a paralegal or legal assistant program approved by the ABA.
(3) A certificate of completion from a paralegal or legal assistant program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.
(4) A certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a legal document preparer.
(5) A degree from a law school accredited by the ABA or institutionally accredited.

Business:

(1) Certification as a business entity.
(2) Designated principal who holds individual certification as a legal document preparer.

Administration and regulation.

Examination on legal terminology, client communication, data gathering, document preparation, ethical issues, and professional and administrative responsibilities. Certification and renewal of certification by the supreme court. Regulatory board. Examination fee. Application fee. Licensing fee. Revenue and expenses administered by the supreme court. Background investigation. 20 CLE hours per 2-year certification cycle. Rules of professional conduct. Complaint and discipline process. Administrative support staff: approximately 3 FTE.

Authority. To or for a person or entity not represented by a lawyer:

(1) Prepare or provide legal documents.

(2) Provide general legal information—but not specific advice, opinions, or recommendations—about possible legal rights, remedies, defenses, options, or strategies.
(3) Provide general factual information about legal rights, procedures, or options.
(4) Provide forms and documents.
(5) File, record, and arrange for service of legal forms and documents.
(6) May not sign any document other than some specified notices.

Source. Arizona Code of Judicial Administration Section 7-208. (http://www.azcourts.gov/cld/Legal-Document-Preparers; http://perma.cc/4K9H-C8RC).

(b) CALIFORNIA

Title. Limited license to practice law or licensing of legal technicians.

Status. The Limited License Working Group was created on March 6, 2013 as a subcommittee of the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight to explore, research and report the feasibility of creating a limited license to enable certified individuals to provide limited, discrete legal services to consumers in defined subject matter areas. Meetings continue.

Source. Website of the California State Bar (http://www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx; http://perma.cc/3YAP-EUD9).

Title. Legal document assistants.

Status. Program in place.

Minimum education.

(1) A high school diploma or GED and 2 years of law-related experience under the supervision of a lawyer.
(2) A baccalaureate degree in any field and 1 year of law-related experience under the supervision of a lawyer.
(3) A certificate of completion from a paralegal program approved by the ABA.
(4) A certificate of completion from a paralegal program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.

Administration and regulation. Register with the county clerk of the county of principal place of business and of any other county in which

services are performed. Registration fees. Bi-annual re-registration. $25,000 bond for an individual; $25,000 to $100,000 bond for a business, depending on the number of assistants. Other statutory regulations. Unable to determine the number of administrative support staff because registration is decentralized.

Authority. For compensation, provide "any" [that is, the following] self-help services to a self-represented individual.

(1) At the individual's specific direction complete in a ministerial manner legal documents selected by the individual.
(2) Provide general published factual information about legal procedures, rights, or obligations that have been written or approved by an attorney.
(3) Make published legal documents available.
(4) File and serve legal forms and documents at the specific direction of the individual.
(5) May not provide advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms, or strategies.
(6) In order to suggest what forms to complete, the legal document assistant must have a detailed guide, approved by an attorney, stating exactly what forms are needed for a particular objective.
(7) The client must know what he or she wants, and what forms to use. Or the client can decide which forms to use based on the attorney-approved guide.

Source. Business and Professions Code Chapter 5.5. (http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=bpc&codebody=&hits=20; http://perma.cc/4CAA-QRBW).See also the website of the California Association of Legal Document Assistants, (http://calda.org/; http://perma.cc/5Y22-L8TC).

(c) COLORADO

Status. A subcommittee of the Colorado Supreme Court Advisory Committee is examining the Washington state LLLT program. First meeting: June 2015.

Source. Press release: *Colorado Studying New Limited Legal License.* (http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm; http://perma.cc/GCY7-HNCH).

(d) FLORIDA

Status. Program in place.

Title. Association of Legal Document Preparers.

Minimum education.

Not stated.

Administration and regulation.

Not stated.

Authority.

Not stated.

Source. Website of the Florida Association of Legal Document Preparers (http://www.faldp.org/; http://perma.cc/A7RR-6J2S).

(e) LOUISIANA

Status. Program in place since "time immemorial."

Title. Notary public.

Minimum education. High school diploma, or GED.

Administration and regulation. Pre-assessment test. Examination. Application with the secretary of state. $35 application fee. $75 examination fee. Good moral character, integrity, and sober habits. Appointed by governor with the advice and consent of the Senate. Registration with secretary of state. $10,000 bond renewed every 5 years. May be appointed in the parish of residence and in any parish in which he or she maintains an office. Annual report to the secretary of state with $25 report fee. Voluntary associations.

Authority.

(1) Draft, prepare and execute affidavits, acknowledgements and authentic acts.

(2) Documents listed on the website of the Professional Civil Law Notaries Association as proper for a notary to prepare, but not negotiate on behalf of a client:

- Affidavits
- Acknowledgments
- Authentic Acts
- Security Agreements
- Mortgages
- Acts of Sales
- Donations
- Bond for Deed
- Acts of Adoption
- Guarantee Letters
- Power of Attorney
- Affidavits of Heirship
- Small Successions
- Wills

- Trusts
- Real Estate Transactions
- Partition of Property
- Incorporations
- LLC Formations
- Operating Agreements
- Partnership Agreements
- Matrimonial Agreements
- Public Inventories
- Contracts
- Bill of Sales
- Quit Claims
- Public Inventories
- Contracts in Authentic Form
- Provisional Custody Agreements

Source. Louisiana R.S. Title 35; (http://perma.cc/RDN5-KKBN). See also the website of the Professional Civil Law Notaries Association, (http://www.pclna.org/notary_duties.html; http://perma.cc/3RH6-YNYB) and the website of the Louisiana Notary Association, (http://www.lna.org/; http://perma.cc/U9WY-7X7J).

(f) NEVADA

Status. Program in place since March 1, 2014.

Title. Document preparation services.

Minimum education.

None.

Administration and regulation. Registration with the secretary of state. Applicant information and history, business information, background check and a cash or surety bond in the amount of $50,000. No application fee. Annual renewal. Active state business license. Complaint and discipline process. Private right of action for double damages. Criminal liability for willful violation of the enabling act. Written disclosure and written contract required. Communication with client is not privileged.

Authority. For compensation and at the direction of a client, provide assistance to the client in a legal matter, including:

(1) preparing or completing any pleading, application or other document;
(2) translating an answer to a question posed in a document;
(3) securing any supporting document, such as a birth certificate, required in connection with the legal matter; or
(4) submitting a completed document on behalf of the client to a court or administrative agency.

Source. Nevada Revised Statutes Chapter 240A and secretary of state Regulation R136-13. (http://nvsos.gov/index.aspx?page=1346; http://perma.cc/4N7M-ZBM3).

(g) OREGON

Title. Limited License Legal Technician. (The task force also outlines a voluntary registered paralegal program.)

Status. The task force studying limited licensing issued its report and recommendations in February, 2015.

Recommendation.

> The Task Force recommends that the Board of Governors consider the possibility of the Bar's creating a Limited License Legal Technician (LLLT) model as one component of the BOG's overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.
>
> Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

Recommended minimum education. Associate degree. 45 quarter credit hours of legal studies in core curriculum requirements (paralegal studies). Instruction in an approved practice area for the number of credit hours determined by the board. Core curriculum exam and practice area exam.

Recommended minimum experience. 4,160 hours or 2 years of substantive law-related experience supervised by a lawyer with 2,080 hours or 1 year of experience in the specialty practice area in which the applicant is requesting licensure. Completed within 3 years of passing core curriculum exam.

Recommended administration and regulation. Regulatory board with administrative support from the state bar association. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). 45 CLE hours every 3 years with a 3-year rotating reporting cycle. One prong of the CLE component would cover the core CLEs and the other prong would be specific to the specialty license. Rules of

professional conduct. Complaint and discipline process. Privileged communications.

Recommended authority in family law.

(1) Provide approved forms, assist client to choose which forms to use. Assist in completing forms in a ministerial capacity and without giving legal advice.
(2) Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern.
(3) Explain options without offering legal opinions.
(4) Review approved documents completed by the client to determine if they are complete and correct.
(5) Review and interpret necessary background documents and offer limited explanations necessary to complete approved forms.
(6) Provide or suggest published information about legal procedures, legal rights and obligations and materials of assistance with children's issues.
(7) Explain court procedures without applying it specifically to the client's case.
(8) File documents at the client's request.

The family law subcommittee also discussed whether LLLTs should be permitted to work with both parties, subject to ethics rules applicable to LLLTs.

Discussed but not decided.

(1) What entity should oversee the program?
(2) How would the program be implemented initially?
(3) How would the initial implementation be financed?
(4) Should legal technicians have to contribute to a client protection fund?
(5) Should legal technicians have to maintain client trust accounts?
(6) What entity should provide malpractice insurance?
(7) What activities and roles should be permitted of legal technicians?
(8) How should legal technicians with licenses from other states be treated?
(9) How should legal technicians who have a primary office outside of Oregon be handled?
(10) What responsibilities should legal technicians have depending on whether they are under the direction and supervision of a lawyer? Is supervision relevant?

Source. Legal Technicians Task Force Final Report to the Board Of Governors (http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf; http://perma.cc/4NE3-AJK5).

(h) WASHINGTON

Title. Limited license legal technician.

Status. Program in place. Initial licenses issued Spring 2015.

Minimum education. Associate degree. 45 credit hours of core curriculum instruction in paralegal studies. Instruction in an approved practice area for the number of credit hours determined by the regulatory board. (Currently 15 credit hours in family law, the only approved practice area.) One credit hour is 7.5 hours of instruction. Core curriculum exam and practice area exam.

Minimum experience. 3,000 hours of substantive law-related work experience supervised by a licensed lawyer. Acquired no more than three years before licensure and no more than three years after passing the examination.

Administration and regulation. Regulatory board with administrative support from the state bar association. Budget approved by the association's board of governors. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). IOLTA account. 10 CLE hours per year. Rules of professional conduct. Complaint and discipline process. Privileged communications.

Authority. Within an approved practice area for which the technician qualifies:

(1) Obtain relevant facts and explain the relevancy to the client.
(2) Inform the client of procedures, including deadlines and documents that must be filed, and the anticipated course of the proceeding.
(3) Inform the client of procedures for filing documents and service of process.
(4) Provide the client with self-help materials prepared by a lawyer or approved by the board.
(5) Review documents or exhibits of the opposing party and explain them to the client.
(6) Select, complete, file and effect service of approved forms, federal forms, forms the content of which is specified by statute, or forms

prepared by a lawyer. Advise the client of the significance of the forms.

(7) Perform legal research.

(8) Draft legal letters and documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a lawyer.

(9) Advise a client about other documents that may be necessary to the client's case, and explain how the additional documents may affect the client's case.

(10) Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates.

Source. Washington Rule APR 28 and implementing regulations. (http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians; http://perma.cc/RJ5W-NQU2).

(i) OTHER STATES

(1) Nearly all states have pro bono programs in which lawyers or non-lawyers offer information, advice or representation for qualified individuals.

(2) The Connecticut Bar Association's Task Force on the Future of Legal Education and Standards of Admission issued a June 2014 report recommending the state modify its practice rules "so that nonlawyers be permitted to offer some basic legal services to the public."

(3) The Massachusetts Bar Association voted in March 2014 to endorse the recommendations of the ABA Task Force on the Future of Legal Education, including the licensing of people other than those with law degrees.

(4) Other states have held meetings about limited licensing but have taken no official steps as January 1, 2015.

Source. Robert Ambrogi, Washington. State moves around UPL, using legal technicians to help close the justice gap, ABA JOURNAL (Jan. 1, 2015, 5:50 AM), (http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the; http://perma.cc/FL75-QKAR).

Tab H

Non-Profit Law Firms

The AFFILIATE
The newsletter and resource guide for bar leaders nationwide

Open Legal Services— The Nonprofit Law Firm Model Everyone Is Talking About

Vol. 40 No. 3

By
AnnMichelle G. Hart

AnnMichelle G. Hart is an Assistant Editor of *The Affiliate* , an ABA YLD Scholar, and the principal attorney and founder of the HartLaw Firm in Seattle, Washington.

There is something new in the legal world. A new law firm model has been getting a lot of attention lately, and for good reason. Two recent law school grads figured out a way to bring legal services to those who need them most and still earn a living.

The lawyers of Open Legal Services (OLS) pride themselves on starting a revolution in the legal industry by becoming the first (and so far only) not-for-profit law firm in Utah catering exclusively to those whose income is too high for traditional legal aid agencies, but still are unable to afford "full price" representation from the private bar. Their motto is appropriate: "Open Legal Services—Justice for the rest of us." The mission of OLS "is to serve clients who earn too much to qualify for free or pro-bono legal services, but who earn too little to afford a traditional private firm."

Narrowing the Gap

The services provided at OLS help narrow the gap for individuals and families that are unable to obtain legal services. Eighty percent of the nation's population living in poverty have legal needs that go unmet. For the middle class that number is 40%–60%. In Salt Lake County, where OLS is based, a typical rate for a divorce attorney ranges between $175 and $230 per hour. The average criminal defense attorney charges a flat fee of more than $1,000 for a misdemeanor, while felonies can cost tens of thousands of dollars. According to the OLS website, 53% of Utah residents qualify for their services. These services are priced on a sliding scale depending on income and family size and range between $60 and $145 per hour. A single individual with one child making $24,000 a year (equivalent to $12 per hour full time) would *not* qualify for help from Utah Legal Services, but would qualify for OLS's lowest rate of $60 per hour. A family of four earning $47,500 per year would pay $70 per hour. That same family earning $72,000 would pay $115 per hour. According to OLS, "By charging on a sliding scale, the people at the top of our scale subsidize the people at the bottom, thus allowing us to help a wider range of people in need than we could otherwise."

Open Legal Services does not provide free services. Although it does charge for all work performed, it does so at a much lower rate than other attorneys. Clients who qualify for services fit between 125% and 400% of the federal poverty level. Those whose income levels fall below that scale are eligible for free help from pro bono entities like Utah Legal Services, Legal Aid Society of Salt Lake, or other free legal clinics. These agencies typically are funded through local and federal grants, which are subject to strict eligibility guidelines. Because OLS does not accept grant money at this time, it is not limited in the types of cases it can take.

Solid Legal Representation

In case you're wondering: yes, Open Legal Services is an actual law firm. Clients are assigned an attorney who works with them on their case, and they do not wait around for two months to do so: "Our attorneys are here because they are passionate, fearless, and determined. We do not provide lesser service, or cut corners. We do away with luxuries, and just provide what clients need: solid legal representation."

The firm focuses on only a few practice areas to streamline its processes. Right now, it serves clients who need family law or criminal defense services. It takes cases involving divorce, child custody and support (including guardian *ad litem*), protective orders, and other family law matters. The firm's lawyers help those accused of misdemeanor and felony crimes, including domestic violence, simple assault, aggravated assault, burglary, possession of drug paraphernalia, retail theft, and DUI/drunk driving. They can also help people looking to expunge their records.

So, what is a not for profit law firm? The firm's website states that "Open Legal Services is a 501(c)(3) public charity located in the Salt Lake City (SLC) area. Open Legal Services' attorneys are members in good standing with the Utah State Bar, and are fully licensed and insured. Our lawyers provide affordable legal services to clients who cannot pay for a full-price private attorney, but who may not qualify for free help." OLS's leadership comprises a board of directors, which includes several seasoned attorneys, an assistant professor of social work, a risk officer from a government agency, and a director of a local food pantry. In addition to the board of directors, Open Legal Services has a group of benefactors that includes individuals, law firms, and companies who all want to see this project succeed.

An Innovative Solution

"Open Legal Services is an innovative solution to the problem of connecting the supply of lawyers to the demand for affordable legal services. The three pillars of our model are: (1) operating as a nonprofit, (2) charging on a sliding scale based on income, and (3) keeping costs low." They make it a point to say, "nonprofit does not always mean free services." For example, many universities and hospitals are structured as nonprofits and charge for their services. Here are some of the benefits they've found by forming a nonprofit entity: the firm's attorneys are eligible for the Public Service Loan Forgiveness Program, they pay less in taxes, and they receive referrals from unique sources—they state they are "often exempt from rules that many courts and nonprofit entities have about where they may send potential clients. Courts, judges, other nonprofits, and even the State Bar can freely refer clients to us." Furthermore, people are willing to volunteer their time for a nonprofit, the firm's clients don't expect mahogany desks and corner offices in a nonprofit, it can offer discounts to clients as well as use discounts and free services for which nonprofits are eligible on things like web hosting, software, and advertising. While it can also solicit donations as a nonprofit, Open Legal Services notes that it does not use donations or grant money to fund daily operations.

Keeping overhead costs low is integral for a program of this nature. "In order to charge less, we have to cost less. We spend only 20% on overhead (everything beyond our lawyers' salaries), while the rest of the legal industry spends 40% on overhead." The firm's desks were $20 at the local thrift store, its electronics were $40 at the University Surplus second-hand store, the firm's lawyers built all the support documents themselves (client database, website, billing, and so on), and they use free, open-source software like WordPress, GIMP, Inkscape, and others. Since the firm has a great word-of-mouth referral program going, it also doesn't need paid marketing, which can cost upwards of $100 per click on Google AdWords.

Why is word-of-mouth working so well for Open Legal Services? Legal Aid and public defenders now have a place to send people that earn too much to qualify for their services, traditional attorneys now have a place to send people that cannot afford their services, and courts now have fewer people appearing before them without an attorney. Open Legal Services started in November 2013 with about 20 cases and has been growing steadily ever since. As of this October, the firm has handled 190 cases and climbing.

Open Legal Services counts on donations to meet its operating expenses, and there are a number of direct and indirect ways you can help. In addition to monetary donations, you can purchase items on Amazon through its Amazon Smile program, where Amazon will donate 0.5% of purchases back to the charity of your choice.

OLS was founded by Shantelle L. Argyle and A. Daniel Spencer. Also on staff are attorneys Milda Shibonis, Francis Chiaramonte, and David McNeill. Profiles for each are listed here.

Open Legal Services

Family & Custody • Criminal • Income-based Fees

Affordable legal services is no longer a contradiction

Open Legal Services is Utah's first nonprofit law firm for clients who earn too much to qualify for free/pro-bono legal services, but also earn too little to afford a traditional private firm. **Our mission is to bridge the justice gap by providing affordable legal services to low and moderate income people.** Such discounted services for clients with modest means are often called "low bono" legal services.

- **More than 50% of Utah residents qualify for Open Legal Services**
- **We charge between $60-145 per hour,** depending on your income and family size
- **We serve the following practice areas:**

Family Law

- Divorce
- Child custody
- Child support
- Protective orders
- See more family law matters we handle

Private Guardian Ad Litem

Criminal Defense

- Third degree felonies
- Misdemeanors
- Infractions
- Expungements
- Appeals
- See more criminal matters we handle

Contact us for a Rate Quote

Open Legal Services has been featured by:

the Atlantic Deseret News

The AFFILIATE ABA JOURNAL S.J. QUINNEY COLLEGE OF LAW THE UNIVERSITY OF UTAH

THE GLOBAL LEGAL POST Lawyerist

myShingle.com go solo, grow solo. Legal Practice Intelligence

Open Legal Services is a 501(c)(3) public charity located in the Salt Lake City (SLC) area. Open Legal Services' attorneys are members in good standing with the Utah State Bar, and are fully licensed and insured. Our lawyers provide affordable ("low bono") legal services to clients who cannot pay for a full price private attorney but who may not qualify for free help. We have both family law attorneys and criminal defense attorneys on staff. We take cases in West Valley City, Provo, West Jordan, Sandy, Orem, Ogden, Layton, Taylorsville, South Jordan, Park City, Draper, Murray, Farmington, Bluffdale, Herriman, Holladay, Midvale, Riverton, and counties including Salt Lake County, Utah County, and Davis County. Call 801-433-9915 today to retain us at our cheaper/inexpensive rates.
This website is for advertising and informational purposes only. This website and any information provided, however, does not constitute legal advice and must not be used as a substitute for the counsel and services that may be required from an attorney. Open Legal Services is not responsible for the consequences of the application of any information taken from this website.

Last modified: October 22nd, 2015 by openlegal

How much will it cost?

Do I qualify?

What if I don't qualify for OLS?

Follow us on FaceBook

Open Legal Services

Like Page | Liked | 578 likes

Get new blog post notifications

Subscribe!

Alumna’s nonprofit law firm seeks to make legal services affordable

BY NIKKI SOMANI **NEWS**

Posted: May 22, 2015 1:20 am

UCLA alumna Lindsay Vose founded Justice Crusaders Legal Services, which has rates based on clients' incomes. (Courtesy of Lindsay Vose)

Two months had passed since Yolanda Barclay’s son was arrested, and she was starting to feel desperate. Barclay couldn’t afford to pay for a private law firm. She opted for a public defender to represent her son in court, but felt that his public defender didn’t care – she said the defender never interviewed witnesses or tried to meet with her son.

Barclay heard about Justice Crusaders Legal Services, a nonprofit law firm founded by a UCLA alumna that charges clients based on their income, from one of her son’s teachers. She said her experience with Justice Crusaders has given her new hope for her son’s case.

“Now my son can have a future,” Barclay said. “Now he can be heard.”

UCLA alumna Lindsay Vose founded Justice Crusaders in August. Before that, she had worked at a private law firm in Los Angeles that charged around $425 per hour. During her consultations, she realized many people could not afford the private law firm she worked at and had limited access to legal services.

Justice Crusaders serves individuals whose incomes are 125 percent to 425 percent above the poverty level. Because of their moderate incomes, many individuals are ineligible for free legal services, Vose said. She currently serves as the program’s director and full-time attorney.

Justice Crusaders has an hourly rate ranging from $65 to $125 per hour, depending on the client’s income and family size. Vose said 51 percent of people in the U.S. meet the program’s requirements, according to 2013 census data.

Vose said her firm bypasses luxuries, such as large office space, expensive computers, weekly lunches and high salaries, to be able to function as a nonprofit organization. Vose added she is currently applying for grants and starting a fundraising campaign for the firm.

When Tamira Cole sought legal counsel from Justice Crusaders earlier this year, private law firms gave her estimates of around $2,500. She said Justice Crusaders charged her $450.

“(Many people) don’t know that these resources are out there,” Cole said. “A lot of people would’ve just went ahead and tried to pay the $2,500 because they (didn’t think they had) another choice.”

Vose said one of her most memorable cases was with a child with autism. She said the client’s family had been paying attorney fees, around $500 per hour. Vose said she closed the case last month, and heard this week that the child is doing well and excited to return to school.

“That’s the best feeling that you can ask for,” Vose said. “Hearing that something that you (did) made a real difference in someone’s life, especially a child’s life. That’s huge.”

Email Somani at nsomani+@media.ucla.edu.

The New York Times

EDUCATION

To Place Graduates, Law Schools Are Opening Firms

By **ETHAN BRONNER** MARCH 7, 2013

Douglas J. Sylvester, dean of the law school at Arizona State University, saw a way to address a shifting job market. Laura Segall for The New York Times

TEMPE, Ariz. — When Douglas J. Sylvester, dean of the law school at Arizona State University, was visiting the Mayo Clinic in Minnesota a couple of years ago he mentioned the shifting

job market for his students — far fewer offers and a new demand for graduates already able to draft documents and interact with clients.

The Mayo dean responded that his medical students and graduates gained clinical experience in hospital rounds closely supervised by attending physicians.

“I realized that was what we needed,” Mr. Sylvester recalled. “A teaching hospital for law school graduates.”

The result is a nonprofit law firm that Arizona State is setting up this summer for some of its graduates. Over the next few years, 30 graduates will work under seasoned lawyers and be paid for a wide range of services provided at relatively low cost to the people of Phoenix.

The plan is one of a dozen efforts across the country to address two acute — and seemingly contradictory — problems: heavily indebted law graduates with no clients and a vast number of Americans unable to afford a lawyer.

Jason Clark, 24, left, and Arman Nafisi, 27, both students at the Arizona State University law school, working on an unemployment benefits case.
Laura Segall for The New York Times

This paradox, fed by the growth of Internet-based legal research and services, is at the heart of a crisis looming over the legal profession after decades of relentless growth and accumulated wealth. It is evident in the sharp drop in law school applications and the increasing numbers of Americans showing up in court without a lawyer.

“It’s a perfect storm,” said Stacy Caplow, a professor at Brooklyn Law School who focuses on clinical education. “The longstanding concerns over access to justice for most Americans and a lack of skills among law graduates are now combined with the problems faced by all law schools. It’s creating conditions for change.”

A pilot program at the University of California Hastings College of the Law will place some third-year students into offices like the public defender’s for full-time training on the understanding that the next year those students will be employed there for small salaries. The program is called Lawyers for America, a conscious echo of Teach for America, in which high-achieving college graduates work in low-income neighborhood schools. The hope, said Prof. Marsha Cohen of Hastings, is that other law schools will follow the model. Professor Caplow of Brooklyn Law said her school planned to be one of the first.

A dozen law schools, including City University of New York and

Thomas Jefferson School of Law in San Diego, have set up incubators to train future solo practitioners in their first year out of school, offering office space and mentors. Pace Law School in White Plains, opened what it calls a community law practice last fall with four graduates serving the region.

“You can’t just hang out a shingle and expect clients to show up in droves,” said Jennifer C. Friedman, executive director of the Pace Community Law Practice. “We want to provide our graduates with the tools of success while serving low- and moderate-income clients.”

And the incoming president of the American Bar Association, James R. Silkenat, of New York, said his top priority next fall would be to establish a “legal job corps” to match lawyers who need jobs with clients who need legal assistance.

“We have these two issues running in opposite directions,” Mr. Silkenat said in an interview. “There are unmet legal needs because of money and geography that seem to be growing, and the question of how to make use of unemployed recent graduates.”

All law schools, including the elites, are increasing skills training by adding clinics and externships. Starting this fall, the University of Virginia will allow students to earn a semester of credit while working full time for nonprofit or government employers anywhere in the world. Law students at the University of Pennsylvania, starting in September, can earn a certificate of management from its Wharton School to improve management skills and accounting literacy. Many of the schools and plans mention medical education as their model.

The Arizona State approach, called the Alumni Law Group, appears to be the most ambitious because of the number of lawyers it will employ (30), its projected cost (a commercial firm of comparable size would cost $5 million a year to run, according to the school’s projections) and its hope to be self-sufficient in a couple of years by charging for its services and gathering donations.

The plan is to have four to five groups of lawyers each overseen by a full-time, salaried supervising lawyer serving a range of clients. The firm will do legal work for other parts of the university, including its high-tech innovation center. The aim is to charge $125 an hour in an area where the going hourly rate is $250. The school also says it wants to reach out to veterans, Hispanics and American Indians whose legal needs are not well met.

Other changes may help the program along. Arizona has just become the first state to allow law students to take the bar exam in their third year rather than after graduation. The school has announced the creation of the North American Law Degree, a three-year J.D. aimed at licensure in both Canada and the United States. Dean Sylvester, who is Canadian, said a big need for lawyers in Canada remained as well as for cross-border practice. The number of Canadians applying to Arizona State for law studies has just risen, as a result.

Arizona's plan, mooted at bar meetings and within law school circles, is producing envy — but also skepticism. Some see a naked attempt to improve the school's ratings in U.S. News and World Report by increasing the percentage of its graduates who find work while doing little to address the access-to-justice problem.

Critics say that $125 an hour is too high to serve those in need and too low to break even. Others say that Phoenix, a city of intense growth and few law students, could support such an operation but that others could not and that local law firms would resent the competition.

"We charge $50 an hour, and I don't take any pay," said Dennis A. Gladwell, who runs a smaller firm at the University of Utah with a staff of five graduates started 16 months ago. "If you are going to charge $125, you are not going to serve an underserved population." Mr. Gladwell, who retired as a partner from the big firm of Gibson Dunn & Crutcher, also said that despite having asked top local firms to send along cases they considered too small for themselves, none responded.

There are other obstacles. Teaching hospitals have a federal tax dispensation. For nonprofit law firms to qualify for an exemption, legislation is probably required. That seems unlikely at the moment. Arizona State is attaching its firm to its nonprofit alumni association to get around the problem for now.

Still, postgraduate training programs appear to be the way of the future for many of the nation's 200 law schools. The law dean of Rutgers University just announced plans for a nonprofit law firm for some of his graduates.

"I would love to blink and wake up in 10 years and see where all this ends," said Ms. Friedman of Pace Law School. "We know about 10 to 15 programs opening in the coming years. That means there are 30 more behind them. Every faculty is talking about this."

Correction: March 9, 2013

A capsule summary on Friday for a national article about the efforts by law schools to provide employment and training programs for their graduates misstated the number of Americans who are unable to afford a lawyer. As the article correctly noted, it is a "vast number" of Americans, not a "vast majority."

A version of this article appears in print on March 8, 2013, on page A14 of the New York edition with the headline: To Place Graduates, Law Schools Are Opening Firms.

Tab I

Pro Bono Requirements

Advisory Committee on New York State Pro Bono Bar Admission Requirements

Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments

SEPTEMBER 2012

Advisory Committee on New York State Pro Bono Bar Admission Requirements

CO-CHAIRS

Hon. Victoria A. Graffeo
Associate Judge, Court of Appeals of the State of New York

Alan Levine, Esq.
Partner, Cooley LLP

MEMBERS

Steven Banks, Esq.
Attorney-in-Chief, Legal Aid Society

Helaine M. Barnett, Esq.
Chair, Task Force to Expand Access to Civil Legal Services in New York

Hon. Betty W. Ellerin
Former Presiding Justice, Appellate Division, First Department
Senior Counsel, Alston & Bird LLP

John D. Feerick, Esq.
Norris Professor of Law and Founder & Director of the Feerick Center for Social Justice
Fordham University School of Law

Hon. Fern A. Fisher
Deputy Chief Administrative Judge for New York City Courts and Director, New York State Courts Access to Justice Program

Sharon Katz, Esq.
Special Counsel for Pro Bono
Davis Polk & Wardwell LLP

Hon. George H. Lowe
Co-Chair, New York State Bar Association President's Committee on Access to Justice
Bond, Schoeneck & King, PLLC

Dean Makau W. Mutua
SUNY Buffalo Law School

Lillian M. Moy, Esq.
Executive Director, Legal Aid Society of Northeastern New York

Jerold R. Ruderman, Esq.
Of Counsel, Wilson Elser Moskowitz Edelman & Dicker LLP

William M. Savino, Esq.
Managing Partner, Rivkin Radler LLP

Samuel W. Seymour, Esq.
Partner, Sullivan & Cromwell LLP

Stephen P. Younger, Esq.
Partner, Patterson Belknap Webb & Tyler LLP

COUNSEL

Mary C. Mone, Esq.
Office of Court Administration

Paul Lewis, Esq.
Office of Court Administration

Table of Contents

Introduction

ON MAY 1, 2012, THE HONORABLE JONATHAN LIPPMAN, Chief Judge of the State of New York, announced that beginning in 2013, prospective attorneys will be required to spend 50 hours performing pro bono work as a requirement for admission to the bar of the State of New York. This requirement arose primarily to respond to the crisis in access to justice. More and more people are navigating the complexities of the court system, in New York and around the country, without the assistance of an attorney. In New York State alone, millions of such litigants appear in court annually, many of them fighting for the essentials of life — housing, family matters, access to health care and education, and subsistence income. Providers of free legal services for low-income New Yorkers are turning away eligible clients because of lack of resources, having no choice but to leave them to fend for themselves.

The Chief Judge, with the help of the Judiciary's partners in government in the legislative and executive branches, has been able to obtain critical state funding for civil legal services over the last two years. As Judge Lippman has acknowledged, this funding will go a long way in addressing the needs of litigants and others in desperate straits. However, much more needs to be done to bridge the continuing gap between the rising need and the availability of services.

The Chief Judge frequently acknowledges the contribution of pro bono work by the practicing bar, praising those who have embraced a culture of service. "So many lawyers understand that it is their special responsibility to use their skills and their position to help ensure that we are providing for the justice needs of *all* New Yorkers." For centuries, as the Chief Judge has said, assuring access to justice by performing pro bono service for those in need has been a part of the professional lives of lawyers; it is recognized as the professional responsibility of those privileged to be licensed to practice law. Additionally, law schools in New York and around the country have long recognized that serving the public is an essential element of being a lawyer. They all offer pro bono opportunities for students, and many even require the performance of pro bono work as a condition for graduation.

By requiring 50 hours of pro bono work, properly supervised, from the many thousands who apply for New York bar admission each year, this initiative addresses the crisis in access to justice, and — just as importantly — helps prospective attorneys build valuable skills and imbues in them the ideal of working toward the greater good. As the Chief Judge put it:

> "If pro bono is a core value of our profession, and it is — and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should — these ideals ought to be instilled from the start, when one first aspires to be a member of the profession. The hands-on experience of helping others by using our skills as lawyers could not be more of a pre-requisite to meaningful membership in the bar of our state."

For the aspiring lawyer, it is hoped that this initiative will provide several benefits. If law students receive instructive and meaningful pro bono experiences, they will be exposed to the pressing needs of those less fortunate and gain a deeper understanding of the problems confronted by

those segments of society that have little access to legal resources and institutions. For those students who opt for complying with the requirement by working in the government arena, they will learn of the myriad legal opportunities for lawyers in the public sector. Equally important is the recognition that lawyering is a mentoring profession. By requiring supervision of all qualifying work, the prospective lawyers will acquire hands-on skills under the guidance of committed members of the legal profession. It is our goal for law students to understand the intrinsic rewards and personal satisfaction from their volunteer efforts that practicing attorneys consistently experience, and that this will encourage them to make pro bono work a regular part of their professional lives after admission to practice. This is a great opportunity for the legal profession, organized bar, legal services providers, and all those devoted to improving the access to justice to work with law schools and their students to participate in a statewide initiative to imbue future generations of lawyers admitted to practice in New York State with the commitment to pro bono and public service work.

The Advisory Committee's Outreach Efforts

THE ADVISORY COMMITTEE ON NEW YORK STATE PRO BONO BAR ADMISSION REQUIREMENTS was appointed by Honorable Chief Judge Jonathan Lippman on May 22, 2012. The Advisory Committee was asked to provide recommendations to the Chief Judge and the Presiding Justices of the four Appellate Division Departments on the scope and nature of this new initiative. Chief Judge Lippman's appointments reflected all the stakeholders interested in the formulation of the pro bono requirement for bar admission. Co-Chairs of the Advisory Committee are the Honorable Victoria A. Graffeo, Associate Judge of the New York Court of Appeals, and Alan Levine, a practicing lawyer and former Chair of the Legal Aid Society. Included on the Committee are the Deputy Chief Administrative Judge for the New York City Courts, who serves as the Director of the New York State Access to Justice Program, current and former state and local bar leaders, a former Justice of the Appellate Division, a current and a former law school dean, representatives of legal service providers throughout the state, a pro bono counsel from one of the country's leading law firms, and the Chair of the Task Force to Expand Access to Civil Legal Services in New York.

The Advisory Committee worked formally and informally on a daily basis from its formation through the release of this Report. Because of the vast experience of the members of the Advisory Committee, the Committee conferred about the many different aspects of the proposal. We have explored its impact on the State Board of Law Examiners, including understanding the nature of the pool of applicants who take the bar examination. We have also consulted with deans and representatives of the 15 New York State law schools to understand the clinical and other programs that are available in law schools, the resources available to assist students in complying with this proposed rule, their experience in administering pro bono projects and their concerns about foreign-educated students in LL.M. programs. Recognizing the unique role of legal services providers in this initiative, we worked closely with members of the Task Force to Expand Access to Civil Legal Services to gather information regarding the capacity of the system to accommodate the thousands of law students who will be available to assist them in their work, as well as the issues of supervision that necessarily will arise. The bar leaders on the Advisory Committee have

played an active role in assessing the suitability of aspects of the proposed rule and in terms of achieving involvement and support from the organized bar.

By way of background, as we discuss more thoroughly in this Report, more than 15,000 candidates each year take the New York State bar examination and, in 2011, more than 9,000 were admitted. Roughly one-third of those candidates were educated in New York State law schools, one-third educated in law schools around the country and one-third were from foreign jurisdictions. We recognize, as Chief Judge Lippman noted in his Law Day 2012 speech, that what New York does with this initiative can, and will, have national implications. Accordingly, we have cast a wide net in seeking input from national leaders of the pro bono community and from law schools around the country. With the breadth of the Advisory Committee's experience and relationships in this area, we have also been able to reach other interested parties, soliciting views on how this proposed rule should be defined and implemented from the standpoint of pro bono and legal services organizations, bar associations, New York State court administrators, and law schools throughout the United States.

Moreover, a national culture exists within the legal profession and the nation's law schools that has encouraged pro bono service for decades. Indeed, this new requirement is not written on a blank slate. It is made possible by the law schools that have led the way by encouraging pro bono and public service for students. We are mindful that this proposed rule should reflect the best of those experiences to make this a model for the nation. We have therefore sought the advice of the nationally recognized Pro Bono Institute and other national advocates, and they have all provided valuable input.

The Advisory Committee held three all-day meetings in June, in July and in August to provide a forum for discussion with many of the interested groups.

- We convened a roundtable discussion with the deans or their representatives of all 15 law schools located in New York State and also solicited views on the proposed requirement from nearly 200 other ABA-accredited law schools in the United States. Follow-up discussions with representatives of a number of New York's law schools, as well as out-of-state law schools, took place. In particular, law schools with mandatory requirements, such as Columbia, Touro and Harvard, shared their experiences in implementing their pro bono requirements for graduation.
- We met with the leadership of the New York State Bar Association, the City Bar, the New York County Lawyers' Association and the Women's Bar Association, and received written comments from other local bar associations. Many other representatives of the organized bar weighed in with issues relating to the requirements and supervision of the work.
- There were presentations by legal services providers that operate in different regions of the state to help us understand their needs and the current delivery systems for legal services to the poor in all corners of New York. We examined the availability of pro bono opportunities for law students within their organizations.
- The Advisory Committee heard from representatives of government law offices about their capacity for helping students meet this requirement within the public realm.

- We met with the Association of Pro Bono Counsel to review the programs that are supervised in the large New York law firms.
- The New York State Board of Law Examiners provided us with information on the bar examination process, and Justices from the Appellate Divisions and the employees who are responsible for bar admission procedures were consulted regarding workable guidelines and recommendations on needed documentation.
- Finally, we received numerous comments and suggestions from students, legal services providers and practicing lawyers.

Pool of Applicants for Bar Admission in New York

IN NEW YORK, THERE ARE TWO ENTITIES INVOLVED IN THE ADMINISTRATION OF ADMISSION TO PRACTICE, with two distinct areas of responsibility. The New York State Board of Law Examiners (SBLE), whose members are all practicing attorneys and appointed by the Court of Appeals, administers the New York bar examination, which is given twice a year (in February and July). The SBLE is responsible for the creation and grading of the New York portion of the bar examination and matters of policy related to the examination. The SBLE also works with the Court of Appeals in applying Part 520 of the Rules of the Court of Appeals for the Admission of Attorneys.

After bar examination passage, candidates apply for admission to one of the four Appellate Divisions of the New York Supreme Court, depending on place of residence or employment. The Appellate Divisions review the admission applications, appoint and supervise their Character and Fitness Committees, and approve candidates for admission. Each applicant for admission completes an application packet that includes an admission questionnaire, two good moral character affidavits, employment affidavits and law school certificates. The Appellate Divisions have the right to request additional information. All applicants for admission attend a personal interview with a member of the Character and Fitness Committee prior to admission, which requires all applicants to travel to New York for the interview. If the Character and Fitness Committee discovers an issue affecting fitness, the Committee can further investigate and conduct a hearing.

New York tests a vast number of candidates each year – more than 15,000 in 2011 — or approximately 20% of all the candidates taking a bar examination in the United States each year. The number of candidates seeking admission to practice in New York has grown steadily and New York now tests more foreign-educated candidates than any other jurisdiction in the country. In 2011, 70% of the candidate pool was educated in the United States and 30% were foreign educated. New York tested 80% of all foreign-educated candidates who took an American bar examination in 2011. This pool of foreign-educated candidates is a reflection of New York State's prominence in international finance and trade and, as a result, admission to the New York bar is a highly sought credential in international legal circles. It is important when developing a rule that deals with bar admissions to recognize that more than half of the candidates taking the New York bar examination are not graduates of New York's 15 law schools. In 2011, New York tested more than 10,500 graduates from 188 American law schools in 49 states, and more out-of-state law

graduates took the examination than graduates of New York's law schools. Add to that figure the more than 4,400 foreign-educated pool of test-takers from 122 foreign countries, and it is obvious that any proposal dealing with bar admissions must take serious account of the diverse composition of the annual pool of candidates for bar admission in New York.

Recommendations and Conclusions

AS CHIEF JUDGE LIPPMAN EMPHASIZED IN HIS LAW DAY 2012 ADDRESS announcing this pro bono initiative:

> "Those who are privileged to call ourselves lawyers have a special duty as the gatekeepers of justice to participate in preserving what we hold so dear….It is the legal profession's commitment to equal justice and to the practice of law as a higher calling that has made service to others an intrinsic part of our legal culture. …. "

Consistent with Chief Judge Lippman's aspirations, we recommend the 50-hour requirement inculcate law students with core values of the legal profession through qualifying law-related work (i) in the traditional pro bono areas of legal services for the poor and unrepresented, (ii) in the traditional areas of public service throughout the levels of federal, state and local government and the judiciary, and (iii) in the service of not-for-profit institutions.

Our proposed definition of the nature of law-related work qualifying for the 50-hour requirement is consciously inclusive. Beyond the traditional area of pro bono service to those unrepresented in our society, we have chosen as an Advisory Committee to recommend that essentially law-related work performed in government and the judiciary qualify, as well as work for not-for-profit organizations. We recognize that in the national pro bono community there are numerous definitions of the concept of "pro bono." Law schools requiring a certain threshold of pro bono service for graduation, or for conferring a graduation prize for pro bono service, have distinct — and laudable — reasons for encouraging pro bono work for the poor and unrepresented where there is such a crisis in need. Many law firms in New York and around the country have aspirational goals for the performance of certain levels of pro bono service and, for that work, the Association of Pro Bono Counsel uses a nuanced definition from the Pro Bono Institute that also draws a certain line in defining what qualifies as pro bono service for practicing attorneys, which we should consider for government-related work.

There is no dispute that the poor and unrepresented who cannot afford a lawyer present the quintessential client for pro bono work. As Chief Judge Lippman noted in his Law Day 2012 speech,

> "The critical need for legal services for the poor, the working poor and what has recently been described as the near poor could not be more evident."

A prime objective of Chief Judge Lippman's initiative is to use the collective value of these hours to bridge the gap in representation for these low-income families and individuals and organizations that serve this population in our society.

But, Chief Judge Lippman's Law Day 2012 remarks go a step further and identify the need to impress upon law students "the conviction that serving the public is an essential component of our professional identity as lawyers." The public interest is served by government; it is served by government at all levels and in all agencies. Political philosophy aside, there should be no higher aspiration for a lawyer than to work in the public interest in one way or another, and thus as an Advisory Committee we believe that the definition of pro bono service by law students and law graduates should necessarily include *law-related work* that a law student can perform in the government arena. (We are, however, of the view that partisan political work should not qualify.) Similarly, it is not disputed that not-for-profit organizations are constrained by resources and are working for the improvement of their respective aspect of society. We see the 50-hour rule as encouraging law students to understand the many different roles that a lawyer can perform in society. If a law student can have a positive experience before becoming a lawyer in working in any area that would serve the public interest, then we believe that it will encourage participation on a volunteer basis when that student becomes a member of the bar. In addition to these valid policy reasons for an inclusive definition of qualifying work, we recognize the practical impact of thousands of law students performing this kind of work for the first time as a prerequisite for admission to the New York bar.

Specific Recommendations

A. Qualifying work must be law-related

We urge that the qualifying work must be *law-related;* that is, law students should be required to use the legal skills acquired through legal education so that as prospective lawyers they will learn the many ways in which it is possible to contribute to the public good as a practicing lawyer. While we admire law students who contribute time to building a home for Habitat for Humanity or working in a soup kitchen for the needy, the 50-hour requirement is intended to build new generations of lawyers who see a role for lawyers throughout their careers in the public interest, either in full- or part-time employment or through volunteer activities. Recognizing that only those admitted to practice law can actually provide legal services and legal representation, we emphasize that law students will be using those legal skills that are appropriate to their status and the rules should require that such work be performed under the supervision of practicing lawyers, of a law school program or other suitable legal oversight.

B. Law-related work can be performed in law school or in an employment setting so long as completed before application for bar admission

We recommend that the *law-related work* qualifying for this requirement can be performed (i) as part of a law school clinical program (whether the student receives law school credit or not), (ii) as part of summer or part-time employment (whether that employment provides the student with a stipend or a salary), (iii) during the course of law school in an intern /externship (whether the student receives a stipend or salary); (iv) during the course of law school in a qualified setting not associated with a law school; or (v) during the course of full-time or part-time employment after graduation if that employment otherwise qualifies as pro bono work or public service, as

defined in these recommendations. The Advisory Committee heard the debate from those who favor/disfavor allowing law school credit programs as qualifying work and has concluded that some of the finest programs with intense supervision that provide legal training in the public interest are the clinical programs operated by law schools. Participation in such programs should be encouraged. Moreover, were we to disallow enrollment in qualifying clinical programs, we would be significantly reducing the supply of opportunities available to law students to satisfy this requirement. It is important to note that these particular requirements have the unanimous support of the New York's law school community.

C. Requirement is effective now for first- and second-year law students

As Chief Judge Lippman declared in his Law Day 2012 speech, there is a "crisis" of need for legal services for the poor and unrepresented in New York State and elsewhere. Legal services providers and many others support the proposition that the immediate, additional support of qualifying work by law students would be a positive outcome both for their clients and their organizations, and would help to ease this crisis. For this reason, consistent with Chief Judge Lippman's announcement, we recommend that the pro bono requirement be effective immediately for those entering their first year and second year of law school.

However, we are persuaded that the administrative burden to provide all law students graduating nine months from this date with adequate and meaningful opportunities to comply with the new rule places too much of a strain on the law schools and their senior classes to apply the requirement to those presently entering their final year of legal study. Law students themselves need to gather information about qualifying opportunities. By the time this Report is issued, classes will have begun for the Class of 2013; schedules for many are set for the entire year; and law school budgets are already in place that otherwise could provide further administrative assistance to students. Given that current one-year LL.M. candidates may have started their programs, it would be impossible for them to have had prior notice of the commencement of the 50-hour requirement. By the same token, legal services programs need to determine the quantity of students they can adequately supervise. The organized bar needs to publicize the need for lawyers engaged in pro bono work to offer to provide qualifying work for students. In addition, we appreciate that the Appellate Divisions also must prepare to administer the requirement.

Accordingly, we recommend that the rule commence with the law school graduation classes of 2014 and thus, those seeking admission to the bar after January 1, 2015 will need to demonstrate compliance with the 50-hour pro bono requirement. Law school graduates of earlier years who apply for admission after January 1, 2015 will also need to comply with the rule. This proposed schedule has the unanimous support of all New York's law schools.

D. Qualifying work can be performed outside New York

We recommend that qualifying law-related work be allowed to be performed anywhere in the United States or in a foreign country. First, as we have pointed out, approximately one-third of those individuals sitting for the bar examination in New York attend an ABA-accredited law school outside our state. Many of those law schools provide similar clinical programs and public interest opportunities for students comparable to those at New York's 15 law schools. Some of them have

been leaders in developing pro bono curricula in their jurisdictions. We have benefited from input from a number of these law schools who have urged that qualifying work be permitted in their law schools. We see no valid reason to provide otherwise. Second, at least one-third of the prospective lawyer candidates that sat for the New York State bar examination in 2011 were foreign educated. Some received their entire legal education outside the United States, while others were matriculated in one-year LL.M. programs offered at American law schools. It would be inequitable to impose a more lenient, or more stringent, requirement on these candidates for admission to the bar. These applicants come from more than 120 countries and some of these countries have their own requirements for pro bono service. We understand from administrators of LL.M. programs that a number of these foreign-educated students will have pro bono opportunities available in their home countries that will meet the criteria that this rule will establish, and of course, there are opportunities in the United States during and after their LL.M. courses of study that these candidates can avail themselves of. We therefore propose that the 50-hour requirement apply to *all* applicants to the New York bar (except admission-on-motion candidates) and that qualifying work may occur in another state or country. But, we further recommend that the Affidavit of Compliance for the pro bono requirement provide for more detail on the circumstances where the work is performed outside the United States, because the Character and Fitness Committees at the Appellate Divisions are likely to be unfamiliar with pro bono opportunities outside the United States.

E. Mandatory supervision is essential

The Advisory Committee thoroughly explored the issue of supervision. We are mindful that the individuals complying with this proposed rule will most likely be law students, not admitted practicing lawyers, and that in its Judiciary Law, New York State, like all jurisdictions, forbids the unauthorized practice of law. At the same time, we are of the view that for this requirement to be a valuable learning experience, the qualifying *law-related work* must be supervised. As we point out in other sections of this Report, one of the principles underlying this requirement is to expose law students to the professional value of volunteering for pro bono work and performing government service. An essential aspect of that experience is the opportunity to perform this law-related work in legal environments where there is exposure to competent practicing lawyers. Clinical programs, legal services providers and their programs, and government law offices all present the kind of legal environments that we believe will maximize the value of this experience. Equally important is the need for the supervisor to appreciate the value of that role. Thus, we recommend that the Affidavit of Compliance form (discussed more fully below) provide for the signature of the supervisor, along with a telephone number and email address. In this way, there will be a recognition on the part of the supervisor, as well as the applicant, that the work is to be completed under supervision. If there is more than one location in which the 50 hours were completed, a separate form should be required for each such location or project. No application for bar admission should be accepted without the appropriate supervisor certification.

We make a special point of the role that the organized bar can play here. Practicing lawyers supervising this qualifying work have an important mentoring function. We encourage the organized bar through its young lawyer and pro bono sections to create programs that assist legal services providers and law schools in implementing this rule.

F. Qualifying work is an essential part of education and should not be deferred until after admission

The Committee gave serious consideration to the requests from interested parties to allow deferral of the 50-hour pro bono requirement until the first or second year of practice after admission. Although this would extend the time for compliance, the Committee determined that this recommendation was not feasible and would result in inequities among applicants for admission. A considerable number of candidates who take the New York bar examination, particularly those from foreign jurisdictions, are interested in acquiring New York admission solely as a credential — they do not intend to practice in New York. But there is no way of distinguishing between those candidates who intend to practice in New York from those who have no plans of returning to New York after securing admission. Hence, the adoption of a deferral option would result in an undetermined number of applicants for admission claiming that they will fulfill the pro bono requirements during the deferral period, but New York will not be able to enforce the rule if these individuals move to other states or return to home countries. This then creates an inequality in the bar admissions process that would be virtually impossible to avoid.

More importantly, the deferral proposal not only would impose a new and impractical administrative burden on the Appellate Divisions but also raises the difficult question of appropriate enforcement. If satisfaction of the pro bono requirement is allowed to be deferred post-admission, should delinquent attorneys be referred for disciplinary action? A reprimand, censure or other penalty would damage their fledgling professional reputations and would not serve the laudable aim of stimulating the growth of volunteer pro bono legal services by attorneys admitted to practice. The Committee is further aware of the opposition of many bar associations throughout the country to mandatory pro bono requirements for the practicing bar. For all these reasons, the Committee has decided to recommend as a bright-line rule that the pro bono requirement be completed at the time an applicant's admission packet is submitted to the appropriate Appellate Division. The rule is then easy to understand, becomes a component of training for the legal profession and is capable of administration consistent with the other aspects of the admission process.

The Proposed 50-Hour Rule

CONSISTENT WITH THE FOREGOING DISCUSSION, THE ADVISORY COMMITTEE RECOMMENDS the following definition for qualifying law-related work for admission to the New York bar:

For purposes of the requirement for admission to the New York bar, qualifying work consists of pre-bar-admission activities that are:

1. law-related, which means that knowledge of the law or the exercise of legal skills is required to perform the activities; and

2. performed under the supervision of: (a) a member of the law school faculty or a law school instructor, or (b) an attorney admitted to practice and in good standing with the bar in the jurisdiction in which the work is performed, or (c) in the case of a clerkship or externship in a court system, by a judge or an attorney employed by the court system;

3. provided that such activities involve:

- **a.** assisting in the provision of legal services without charge (i) to persons of limited means or (ii) to not-for-profit organizations in matters that are designed primarily to address the needs of persons of limited means; or
- **b.** assisting in the provision of legal assistance without charge to individuals, groups, or not-for-profit organizations seeking to secure or promote access to justice, including but not limited to the protection of civil rights, civil liberties or public rights; or
- **c.** assisting in the provision of legal assistance without charge to not-for-profit organizations qualified under Internal Revenue Code, Section 501(c)(3); or
- **d.** providing legal services that are authorized and approved pursuant to (a) Section 484 of the New York Judiciary Law regarding practice by students and recent but unadmitted law graduates or (b) equivalent legal authority in the jurisdiction in which the services are performed; or
- **e.** assisting in the provision of legal assistance in public service for (a) a judicial, legislative, executive or other governmental entity at the federal, state, county or local level, or (b) a federal, state or local judge, or an administrative judge; or
- **f.** full-time or part-time employment in any of the circumstances that would otherwise be permitted as defined in paragraphs (a) through (e) above.

Affidavit and Certification of Compliance

ATTACHED AS AN APPENDIX "A" TO THIS REPORT IS A PROPOSED AFFIDAVIT OF COMPLIANCE, which we suggest should become part of the Application for Admission to Practice as an Attorney and Counselor-At-Law in the State of New York that all applicants for bar admission in New York must complete and file with the respective Appellate Division. First, all 15 New York law schools were unanimous in preferring not to have the administrative burden of maintaining the relevant records for their students and graduates. Accordingly, we recommend that each law student should be held responsible for his/her own compliance. Second, if all 50 hours of the requirement are met in one legal environment or one program, only one form will be necessary. If an applicant has qualified for the 50 hours in multiple settings, one form for each setting will be required. Finally, each Affidavit will set forth the identification of the client/organization/legal services provider/governmental entity under which the law-related work was provided; the dates/time period within which such work was performed; and a description of the actual work. **Each form must be signed and verified under penalty of perjury by the applicant.** Each Affidavit of Compliance must also include a certification by the applicant's supervisor verifying performance of the work. As with other documents provided in the Application, we would expect that the circumstances of the qualifying law-related work will be the subject of applicant interviews with the Appellate Division Character and Fitness Committees.

Continuity of implementation

THIS PROPOSED NEW RULE WILL HAVE NO MODEL IN THE NATION. We commend the Chief Judge for making New York State an exemplar to the legal profession and the nation in encouraging pro bono service for our profession by requiring a reasonable number of hours in pro bono work as a prerequisite to admission to the New York bar. Having acknowledged that this is a groundbreaking proposal, we recognize that the scope and implementation of the rule will require further assistance, and, perhaps, future revision. For this reason, it is our view that the Advisory Committee should continue in existence for two years during which time we can provide assistance and evaluate the experiences of law students, the law schools and those providing the legal environments in which the 50-hour requirement will be performed.

Appendix A:

Form of Affidavit of Compliance

APPLICATION FOR ADMISSION TO PRACTICE AS AN ATTORNEY AND COUNSELOR-AT-LAW IN THE STATE OF NEW YORK

FORM AFFIDAVIT AS TO APPLICANT'S COMPLIANCE WITH THE PRO BONO REQUIREMENTS, INCLUDING CERTIFICATION BY SUPERVISOR

INSTRUCTIONS

All applicants for admission to practice as attorneys in New York State must complete at least 50 hours of law-related pro bono work as defined and required by Court of Appeals Rule § 520.16 prior to being admitted. Applicant must submit a form affidavit for each pro bono project that applicant is using to satisfy the 50-hour requirement and must secure the certification of the individual who supervised each project. All applicants should refer to the Frequently Asked Questions about Pro Bono Requirements (available at www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml) for further information about qualifying work.

PLEASE PRINT OR TYPE THIS FORM

To Be Certified Under Oath By Applicant:

NAME OF APPLICANT

ADDRESS OF APPLICANT

CITY / TOWN / VILLAGE

STATE ZIP COUNTRY *(if not USA)*

NAME OF ORGANIZATION/DEPARTMENT WHERE PRO BONO EXPERIENCE WAS COMPLETED

SUPERVISING ATTORNEY

ORGANIZATION/DEPARTMENT ADDRESS

STATE ZIP COUNTRY *(if not USA)*

ORGANIZATION PHONE ORGANIZATION E-MAIL

DATES OF SERVICE: **From** *(mm/dd/yyyy)*: ____/____/_____ **To** *(mm/dd/yyyy)*:____/____/_____

NUMBER OF HOURS COMPLETED: _____.

INDICATE CATEGORY OF SERVICE by checking appropriate box below:

☐ **Legal Services Provider** ☐ **Government Service** ☐ **Law School Sponsored Program** ☐ **Other**

All applicants must provide a description of the nature of the pro bono work completed. If applicant performed the pro bono work outside the United States, complete details must be included about the type of work performed, the nature of the program and where the work was performed. *(Attach additional sheets if needed.)*

STATE (Country) OF: _____)

_____) ss.:

COUNTY (City) OF: _____)

I *(name of applicant)*, _____, SWEAR (OR AFFIRM) that the foregoing information is true and accurate to the best of my knowledge.

Signature of Applicant: _____

Print Name: _____

Subscribed and sworn to or affirmed before me this

_____ day of _____ in the year 20_____.

_____

Notary Public
(Affix seal or stamp.)

(If this afffidavit is sworn to outside the United States, its commonwealths, territories or possessions, attach a certificate of the attesting officer's authority.)

To Be Completed By Supervisor:

SUPERVISOR CERTIFICATION

I HEREBY CERTIFY (a) that I have read the foregoing Affidavit of Compliance and (b) that the applicant has accurately described the circumstances, timing and nature of the pro bono work described therein.

▾ ATTORNEY SIGNATURE ▾ PRINT ATTORNEY NAME ▾ DATE

▾ ATTORNEY TITLE

▾ ATTORNEY EMPLOYER:

▾ JURISDICTION WHERE ADMITTED TO PRACTICE LAW:

▾ E-MAIL ADDRESS ▾ TELEPHONE

▾ COMMENTS (*if further explanation is necessary)*

PRO BONO

Following New York's lead, California bar officials plan to require pro bono work for admission

POSTED MAR 13, 2015 03:55 PM CDT

BY MARTHA NEIL (HTTP://WWW.ABAJOURNAL.COM/AUTHORS/5/)

Following New York's lead, bar officials in California are in the process of developing a pro bono program for law students who plan to practice in the state.

Like the policy adopted by the New York Court of Appeals (http://www.nycourts.gov/ctapps/520rules10.htm#B16), which took effect Jan. 1, the California plan requires 50 pro bono hours. However, the New York requirement must be completed before applying for admission to the bar. In California, young lawyers would be allowed to perform the 50 hours of free legal work either before or after they are admitted.

A State Bar of California web page (http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx) provides additional details about the plan, which must be approved by the state legislature and the California Supreme Court before it is final, according to the Los Angeles Times (http://www.latimes.com/local/california/la-me-adv-legal-aid-students-20150312-story.html#page=1) (sub. req.).

Officials at legal aid organizations say more help representing low-income individuals who can't afford lawyers is greatly needed. However, some question whether untrained law students and recent law graduates will be an effective substitute for the funding needed to operate legal aid programs under the supervision of experienced attorneys.

One key source of funding, interest from attorney trust accounts, plunged during the recession as interest rates dropped. The total plummeted fom $22.8 million in 2008 to $5.2 million in 2014, the newspaper reports. Meanwhile, funding from other sources, including government grants and private donations, also was cut.

While legal organizations would like to put law students and recent law grads to work on pro bono assignments, they need to train and supervise them and provide office space.

Currently, only 10 percent of the law students who apply to volunteer at the Legal Aid Foundation of Los Angeles are accepted, because the group doesn't have resources to oversee more more, pro bono director Phong Wong tells the newspaper.

"The need is definitely there. We turn away so many low-income clients because we don't have the support, the resources to help them," says Wong. "At the same time, there are all these law students who can be put to use. We just need to figure out how to make it work for the clients that we serve."

Related coverage:

ABA Journal (http://www.abajournal.com/magazine/article/new_yorks_new_rule_requires_bar_applicants_to_perform_50_hours_of_pro_bono/): "New York's new rule requires bar applicants to perform 50 hours of pro bono"

Tab J

Veterans

Bar News - February 19, 2010

Legal Aid for Veterans

By: **Jonathan Baird and Daniel Feltes**

Jonathan Baird

With the passing of SB35 during its last session, the NH Legislature formed a commission to study the creation of a legal aid project for low and moderate income veterans in New Hampshire. The bill reflects the efforts of bi-partisan sponsorship by Senators Jack Barnes and Maggie Hassan, and Representatives Russ Ober, Frank Emiro and Kris Roberts. The commission, under the leadership of Senators Jack Barnes and Matthew Houde, is planning to put the project into action.

Veterans comprise about 10 percent of the state's population. Upon returning from service in Afghanistan and Iraq, they often face psychological, physical and economic obstacles that require legal advocacy. Of particular note is the reported high incidence of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), making it even more difficult for New Hampshire's veterans to make ends meet, to get the benefits to which they are entitled, and to get and protect affordable housing.

Daniel Feltes

Mary Morin, the Director of the State Veterans' Council, has identified a significant need for pro bono legal advocacy for veterans and has determined that the creation of a veterans' legal aid project could significantly improve delivery of services. The commission includes representatives from the State Veterans' Council, NH Legal Assistance, the Military Section of the NH Bar Association, the Adjutant General of the NH National Guard, Employment Security, the NH Veterans' Home, the Department of Health and Human Services, the US Dept. of Labor's NH Office of Veterans Employment and Training Services, along with many other organizations and service providers.

In gathering information about the unmet legal needs of New Hampshire's veterans, the commission has heard from the service officers of the American Legion and the Veterans of Foreign Wars. Both have highlighted the need for legal representation in evictions, foreclosures, utility shutoffs, and Social Security Disability claims.

The hope is that staff at the State Veterans' Council, NHLA, and the NHBA Pro Bono Program would work with veteran service organizations and homeless shelters to reach veterans who have pressing legal needs. The State Veterans' Council would refer cases these organizations cannot handle to either NHBA Pro Bono or NHLA.

The commission hopes also to create a training program for attorneys so that they will be qualified to take on more types of cases on behalf of veterans on a *pro bono* basis.

Jonathan Baird is the policy director for NHLA and Dan Feltes is a staff attorney.

Thomas Jefferson School of Law Stands Up for Veterans

November 11, 2015 12:00 PM Eastern Standard Time

SAN DIEGO--(BUSINESS WIRE)--Recognizing the unique sacrifices and needs of U.S. military veterans, students from Thomas Jefferson School of Law repay those who have served our country by offering free legal representation. This Veterans Day, the law school will have helped nearly 1,000 formerly homeless veterans with their legal needs since the program's inception in 2006.

"Adjusting to life after the military can be hard enough, but veterans facing legal issues past or present can really get discouraged," noted Thomas Jefferson School of Law Dean Thomas Guernsey. "I am proud of the services our school and our students are able to provide helping veterans in need clear the hurdles on their path to success."

Under the direction of Thomas Jefferson School of Law Professor Steve Berenson, law students in the Veterans Legal Assistance Clinic program provide veterans with free legal counseling and service. Operated in partnership with the homeless veteran assistance organization Veterans Village of San Diego, the Veterans Clinic program has become a nationally recognized model by focusing exclusively on the legal needs of veterans.

Low- and moderate-income veterans not involved with Veterans Village can also receive free legal assistance through Thomas Jefferson Law's Veterans Self-Help Legal Clinic.

Monroe Rostick is among the veterans who have benefited from Thomas Jefferson Law School's free veteran legal assistance. After falling on hard times, Rostick found himself attending Veterans Village by court order. Led by Thomas Jefferson Law alumnus Zack Mikucki, a veteran himself, Veterans Clinic students were able to get Rostick's probation terminated early and reduce a felony drug conviction to a misdemeanor.

Rostick has made the most of his legal second chance. He has graduated from the Veterans Village program, and has remained clean, sober and employed for months after graduation.

"It's hard to put into words how grateful I am for the work the Thomas Jefferson Law students put in to help me," Rostick said. "Things are so much better now and I have the peace of mind and security to know that I can move on with much better prospects for the future. I thank them for helping me to get my future back."

The hard work and resulting success also made an impression on Mikucki.

“As a fellow veteran, I know how much commitment and sacrifice people like Monroe have demonstrated, and how hard the post-military transition can be,” he said. “We don’t leave our comrades behind in a battle situation and we’re not going to do that here at home either.”

Thomas Jefferson School of Law welcomes the opportunity to help those who served our country. If you are a veteran in need of legal assistance, please contact Veterans Village of San Diego or reach out to the School directly, 619-297-9700.

About Thomas Jefferson School of Law

Thomas Jefferson School of Law offers a comprehensive legal education to a nationally based, diverse student body. The non-profit law school is consistently ranked as one of the most diverse law schools in the nation, with 52 percent of its most recent class being students of color. Located in Downtown San Diego, Thomas Jefferson Law has evolved into an innovative, cutting-edge law school, devoted to the individual needs and success of its students. More information is available at www.tjsl.edu.

Contacts

MJE Marketing
Marlee J. Ehrenfeld, 619-682-3841
marlee@mjemarketing.com

THOMAS JEFFERSON SCHOOL OF LAW

Release Versions

English | EON: Enhanced Online News

More News

TEXAS LAWYERS FOR TEXAS VETERANS
2014-2015

The State Bar of Texas and then-President Terry Tottenham implemented Texas Lawyers for Texas Veterans (TLTV) in July 2010, to address a specific need: provide pro bono civil legal assistance to brave veterans and their families who otherwise cannot afford legal services. Texas has the second-highest population of veterans in the nation, and a distressing number of Texas veterans are living in poverty or without homes. TLTV is a collaborative effort with not only local bar associations, but also with legal aid organizations and veterans service providers to host legal advice clinics throughout the state.

Since the project's launch, more than 18,000 veterans have been served by more than 5,000 volunteer attorneys through local bar associations and legal aid organizations veterans legal clinics in Texas. Veterans' legal needs vary, but many common issues include will execution, benefits issues, and family law.

El Paso Lawyers for Patriots November 2014 Clinic

A volunteer helps veterans at a Saturday legal advice clinic in Conroe.

More than 30 bar associations and organizations are currently participating statewide, including: the Abilene Young Lawyers Association, Amarillo Area Bar Association, Austin Bar Association, Bell County Bar Association, Corpus Christi Bar Association, Dallas Bar Association, Denton County Bar Association, El Paso Bar Association, Hidalgo County Bar Association, Houston Bar Association, Jefferson County Bar Association, Legal Aid of NorthWest Texas, Lone Star Legal Aid, San Antonio Bar Association, and Tarrant County Bar Association.

Most local bars are able to assist veterans who are referred to them, no matter their income eligibility. Veterans continue to be grateful for the support and assistance they receive through the program.

Paralegals assist with intake at a Jefferson County Bar Association clinic.

Clinics would not be possible without committed volunteers. Attorneys across the state have dedicated thousands of hours to serve our veterans. Local universities have also been able to provide many clinics with pre-law/law students who can earn bono hours and are mentored through the program. Local paralegal organizations provide many clinics with effective administrative volunteers as well.

We've had tremendous response from lawyers and local bar associations across the state, but much more remains to be done. If your local bar association is interested in starting a clinic, please contact the Local Bar Services Department at **(800) 204-2222, ext. 1514** or **Localbars@texasbar.com**. Our department can provide resources like the TLTV Toolkit and Clinic in a Box that will assist you in establishing a clinic and keeping it going. The Clinic in a Box contains everything an organization needs to host a veterans legal clinic — forms, folders, signs, office supplies, and more.

Texas Access to Justice

The Texas Access to Justice Commission raised $401,600 for the provision of civil legal services to low-income veterans at its Champions of Justice Gala in April 2015. The State Bar of Texas generously underwrote the event, ensuring that proceeds go to helping veterans get legal assistance.

The Color Guard Presentation at the Champions of Justice Gala by the U.S. Marine Corps Color Guard, Recruiting Station San Antonio

Texas veterans were invited to participate in Texas Veterans Legal Aid Week (TVLAW), a statewide effort in honor of Veterans Day coordinated by the Texas Access to Justice Foundation. During the week of November 10-14, 2014, legal aid programs, local bar associations, law schools, and pro bono private lawyers provided civil legal services for qualified Texas veterans in various locations throughout the state.

For 2014-2015, the Texas Access to Justice Foundation has awarded grants totaling more than $426,000 to 11 nonprofit organizations that will help fund legal aid services for Texas veterans.

With these grants, public interest and pro bono lawyers will be able to provide legal representation to veterans with civil legal problems such as: denial of critical medical care, problems receiving benefits, legal issues related to disabilities, family law matters arising from deployment, and other issues that may arise due to a veteran's absence from home during military service.

Texas Young Lawyers Association

The Texas Young Lawyers Association (TYLA) produced the informative pamphlets *Resources for Veterans Seeking Help* and *Resources for Lawyers Assisting Veterans.* More than 13,560 copies of the veterans' resource guide and nearly 3,445 copies of the lawyers' resource guide have been distributed. If you'd like to request these pamphlets, please contact the State Bar of Texas Public Information Department at **pamphlets@texasbar.com**.

Attorney John Johnson volunteering at a Tarrant County Bar Association TLTV Clinic

Nationwide

TLTV continues to spread nationwide as well. The State Bar of Texas shared this initiative with attorney organizations and pro bono groups at the 2015 National Association of Bar Executives Midyear Meeting and the 2015 American Bar Association Equal Justice Conference. If your organization is interested in learning more about TLTV, please contact the State Bar of Texas Local Bar Services Department at **(800) 204-2222, ext. 1514** or **Localbars@texasbar.com**. Our department can provide resources like the TLTV Toolkit and Clinic in a Box that will assist you in establishing clinics.

texasbar.com/veterans
Providing Legal Counsel To Those Who Served

41349 6/15