Agenda

Committee on Resources for Self-represented Parties

October 14, 2016 12:00 to 2:00 p.m.

Administrative Office of the Courts Scott M. Matheson Courthouse 450 South State Street Executive Dining Room W18A

Welcome and introduction of new members Judge Elizabeth Knight and Tyler Cameron (updated member list)	Tab 1	5 minutes	Judge Marsha Thomas, Chair
Approval of Minutes	Tab 2	5 minutes	Judge Marsha Thomas
ABA Report on the Future of Legal Services in the United States	Tab 3	5 minutes	Judge Marsha Thomas
Where we are as a committee on our priorities (subcommittee reports)	Tab 4	1 hour 30 minutes	Judge Marsha Thomas
Other Business		15 minutes	Judge Marsha Thomas

Committee Web Page

Proposed Bimonthly Meeting Schedule: Matheson Courthouse, Judicial Council Room, 12:00 to 2:00 p.m. unless otherwise stated.

December 9, 2016 February 10, 2017 April 14, 2017 June 9, 2017 August 11, 2017 October 13, 2017 December 8, 2017

Tab 1

Last Name	First Name	Representing
Bentley	Leti	Public
Cameron	Tyler	Urban clerk of court
Collins	Lisa	Appellate clerk of court
Crismon	Sue	Utah Legal Services
Frank	Carol	Rural clerk of court
Griffith	Susan	Public
Hernandez	Carl	J Reuben Clark Law School
Howell-	Jaclyn	S J Quinney College of Law
Powers		
Knight	Elizabeth	Juvenile court judge
Lawrence	Barry	District court judge
McNeil	Shaunda	Bar
Martinez	Chris	Legal Aid Society of Salt Lake
Mittelstadt	Eric	OCAP
Sudbury	Virginia	Low Income Attorney
Thomas	Marsha	Justice court judge
Thomas	Doug	District court judge
Ciccarello	Mary Jane	SHC
Van Buren	Jessica	State Law Library

Tab 2

Minutes of the Committee on Resources for Self-represented Parties

June 10, 2016

Draft. Subject to approval

Members Present

Lisa Collins, Sue Crismon, Carl Hernandez, Judge Barry Lawrence, Shaunda McNeill, Eric Mittlestadt, Virginia Sudbury, Mary Jane Ciccarello, Jessica Van Buren, Judge Marsha Thomas, Carol Frank, Judge Doug Thomas, Chris Martinez

Members Excused

Judge Ryan Evershed, Susan Griffith, Shaunda McNeill, Jaclyn Howell-Powers, Virginia Sudbury, Leti Bentley

Staff

Nancy Sylvester

Guests

Tyler Felt

(1) Welcome, Approval of minutes/Announcements.

Judge Marsha Thomas welcomed everyone to the meeting and introduced Tyler Felt, a self-represented party who would like to make pro se e-filing a priority. The committee reserved on approving the minutes because there was not a quorum. Judge M. Thomas then discussed her annual presentation to the Judicial Council on behalf of the committee where she gave an update on the strategic plan priority. She reported that the Council members were very engaged; the Council heard the many projects the committee is working on. She noted that Rob Rice was also there and there was a question about Self-Help Center funding, to which she responded that she would be back with a request by the committee for additional SHC funding. Judge M. Thomas also noted that Judge Noonan requested statistics on self-represented parties in juvenile court.

Judge M. Thomas then mentioned that Barbara Procarione is retiring from the committee. She has been a member since 2001. Judge M. Thomas expressed appreciation for Ms. Procarione's dedication to the committee. Ms. Sylvester has been communicating with the clerks of court to find Ms. Procarione's replacement. The position she occupied was technically the urban clerk of court position, even though she was a rural clerk.

The minutes were approved later in the meeting once a quorum was established.

(2) Update on Subcommittees and Strategic Plan Priorities

Ms. Ciccarello reported on the last meeting at which the committee prioritized the priorities the SHC has in in its queue. They are as follows: Court navigator; pro se calendars; order drafting, forms, and

website were tied for 3rd; volunteers and student interns; training court staff; rule 16 calendar; committee work. The rule 16 calendars, order drafting, and pro se calendars are really all in the same category. The priority, she said, is the court navigator program and the calendars and order drafting. Regarding the navigator program, there was some additional funding recently for one of her staff to train local court staff about the SHC resources, which was successful. Ms. Ciccarello also trained the Multicultural Center staff on what the SHC does. Ms. Ciccarello interviewed several pro se litigants in front of the Center staff so that they could see how the SHC helps them. Ms. Ciccarello said they are also doing some training with law students and interns in the law library on court resources. They are given assignments to study them and then are tested on them. Court staff are also frequently engaging in Google chat with Ms. Ciccarello. Regardless of funding, they are going to keep trying to continue the court navigator efforts. Judge D. Thomas then mentioned that he had brought up the program in the local judges' meeting.

Regarding the pro se calendars, Commissioner Sagers changed her calendars to mornings specifically so she could have self-help center staff available. Judge D. Thomas asked whether there are pro se calendars in areas other than domestic relations. Judge Lawrence mentioned the debt collection calendar where a few attorneys volunteer. The landlord tenant calendar in West Jordan also has volunteer attorneys. Typical landlord-tenant calendar can have 25 evictions and most tenants do not have attorneys. This just started two weeks ago. On the debt collection calendar, the attorneys often work to negotiate on behalf of the debtor.

Judge Lawrence and Ms. Crismon discussed the challenges of volunteer attorneys. There is a lot of excitement initially, but then it can tend to dwindle. Judge Lawrence mentioned that retiring attorneys are an untapped resource. Several committee members discussed drafting a bar journal article about what retired attorneys are able to do under newly amended rule 14-803. Both Ms. Ciccarello and Ms. Crismon noted what ULS, Timpanogos Legal Center, and the SHC are doing with these retired attorneys, including those who have moved from other states. Ms. Crismon noted that there is talk of creating an emeritus bar section and there are several firms who have discussed offering office space to retired attorneys doing pro se work.

Judge Lawrence said the easy thing about the debt-collection calendars is that settlements are simply put on the record. He noted that he was working to see if adding a notice about the availability of attorneys at the calendars could be done. Ms. Ciccarello mentioned that she texts the litigants for the domestic calendars to remind them they are there along with volunteer lawyers. Ms. Sylvester discussed what Salt Lake City is doing with respect to text notifications and also that text notifications in all cases was a recommendation of the Pretrial Release Study Committee. Judge Lawrence and Ms. Ciccarello noted that Utah Dispute Resolution has also been staffing many of these calendars and their help is tremendous. Mr. Martinez said there is a core group of family law attorneys that volunteer at the domestic calendars. There are others that come and go, too.

Judge D. Thomas said about 9 years ago, there was an attorney who volunteered to simply mediate at the debt collection calendar, which was extremely helpful. Mediators are not used at the debt-collection calendars now, but probably should be. They are used right now on the domestic and landlord-tenant calendars.

In Second District at the child support hearings where the State is involved, volunteers attend the hearings to represent the respondent, Ms. Ciccarello noted. Judge Lawrence and Judge D. Thomas then mentioned that there are parental termination cases when attorneys aren't available, but only when the cases are filed in district court, such as in the case of an adoption and it's contested. Judge Lawrence said Tyler Needham tries to fill requests for volunteer attorneys in those cases. Judge D. Thomas noted that the district and juvenile courts have concurrent jurisdiction in these cases and he has gently encouraged the parties to refile in juvenile court where counsel is available. Legislation has been proposed a few times to fill this gap, but hasn't gone anywhere. This won't get handled until we have legislative support. Ms. Ciccarello discussed a Supreme Court case that said where the State is involved (i.e. child support or parental termination), the respondent should be represented. Judge D. Thomas also noted that these are contempt proceedings where child support is concerned, so that can mean jail time.

Ms. Ciccarello said staffing the pro se calendars takes an extra 14 hours per week beyond the normal SHC duties. Ms. Van Buren discussed quantifying the extra things the SHC does. To do the things the committee prioritized, the committee needs to take all of the attorneys full-time, which will cost about \$91,000. The committee then discussed the court budgetary process. Ms. Van Buren said she would prepare a building block request for that amount to the Council. Every year they are in existence, the numbers of people the SHC helps go up. This year, the amount will be about 21,000. Judge M. Thomas said she'd send out a follow up email about the request. Later in the meeting, the committee unanimously moved to recommend the budget request.

(a) Forms

Ms. Van Buren reported on forms and the way the process can be improved. The process currently involves Ms. Van Buren, Ms. Ciccarello, and Brent Johnson meeting regularly to discuss new forms and requests for new forms. They do primarily district court forms and some appellate. The Board of District Court Judges gives its approval on the forms once they review them. Earlier this year, the Board pushed back, though, stating the belief that there may be too many forms and not enough attorneys involved. Ms. Van Buren said they have been focusing since then on updating existing forms and creating webpages that explain but don't contain forms. Ms. Van Buren mentioned the possibility of this committee instead being the approving body for the forms. There is no rule requiring the Board's approval, although they should be looped in. The forms are also used in different court levels. Committee members noted that attorneys also use the forms, not just self-represented parties. Judge M. Thomas mentioned that this effort has always been ad hoc and it may be time to formalize it. This committee is the only one that has any sort of charge about forms. In the beginning, the forms subcommittee was large but got whittled down to what it is now. The committee then discussed the upcoming paralegal practitioners, who are only going to be able to practice using court forms. Judge Lawrence offered to go talk to the Board about their concerns around the forms process.

(b) Rule 16 Subcommittee

Ms. Sylvester updated the committee on the work of the Rule 16 subcommittee, whose charge came from the Paralegal Practitioner Study Committee's report. The focus is on more intense domestic case

management at an early stage by having case conferences 30-60 days after an answer is filed. The subcommittee includes Commissioners Patton, Sagers, and Conklin, Judge Lawrence, Chris Martinez, Virginia Sudbury, Mary Jane Ciccarello and Commissioner Conklin's case manager, Debbie Carlsen. The two Fourth and Third District commissioners are working on a pilot project and Second District is still assessing what it will be doing. Judge D. Thomas mentioned that he wanted to make sure there was reporting back to the Domestic Case Process Improvements Committee by the Rule 16 subcommittee. Commissioner Conklin and Ms. Ciccarello are both on each subcommittee. It was decided that Commissioner Conklin would report back.

(c) Lawyer Directory

The committee discussed the new lawyer directory, which is populated with over 400 updated attorney profiles now. Several committee members have reviewed the directory and the Bar has been working with the Self-Help Center on using it for referrals. The Bar is continuing to push its members to update their profiles. Ms. Sylvester noted that the Bar is working on a big push while people are paying Bar dues to update their profiles because the login information is the same for both. All of the Bar members are part of the directory, but they need to opt in to say they are receiving clients and update their practice areas.

Ms. Sylvester also updated the committee on the Courthouse Steps Clinic, which is a AAA Taskforce project. It's now housed at the Matheson Courthouse. It's a paid clinic and the SHC has already referred a client to it. They tracked her progress and she was delighted with the experience.

Judge Lawrence reiterated his hope of having a chart of all of the pro bono and low bono efforts happening around the state. Judge M. Thomas noted that Ms. Van Buren and Ms. Ciccarello had started a document on this.

(3) Pro Se E-filing issue

Judge M. Thomas said she had spoken with Ron Bowmaster, director of IT, about pro se e-filing. He said it had been on their list for a while, but they were administering e-filing according to the Council's rules. The CORIS system will be rewritten over a two year period, but their hope is to make pro se e-filing part of it. Tyler Felt came to the committee today to discuss this issue. Ms. Collins said the appellate courts will have both pro se and attorney e-filing as part of their system. Judge Lawrence raised concerns about training on e-filing for pro se litigants and the kinds of filings that may come in when it's opened up. Ms. Frank said this will involve clerks reading every pleading as it comes in, just as they are doing now. Mr. Felt expressed his concerns about pro se e-filing not being available since it creates wide gaps between those who have an attorney and those who don't in terms of access and fairness. For instance, attorneys can e-file at any time, but pro se litigants must walk into the courthouse to do so. There is also a cost issue in terms of service. The courts on the Wasatch Front don't accept emailed pleadings. Judge Lawrence noted how busy the clerks are that work for him. Mr. Felt said the technology is already available here in Utah and also in other states so that the pleadings don't have to just be emailed. Mr. Felt said he used the resources made available for attorneys to train himself on how to e-file. He requested that the committee

add pro se e-filing to the strategic plan. Ms. Frank said the clerks will be spending a lot of time helping pro se litigants through this process. Mr. Felt noted that he requested that the mandatory e-filing rule be changed to allow it for pro se litigants. He's also been communicating with the Technology Committee on this issue and the General Counsel's office. Judge M. Thomas turned the question to the committee of what it would like to do on this issue. Ms. Van Buren noted that the committee could say we support pro se e-filing in the strategic plan. Ms. Ciccarello also said it would be worthwhile to explore how much emailing of pleadings happens.

Judge M. Thomas said she would draft some proposed language for the strategic plan about these issues. Mr. Felt thanked the committee for its time and said he'd be happy to act as a resource on pro se litigant issues in the future.

(4) Other Business/Future Meetings

The next committee meeting will be August 12, 2016.

The meeting adjourned at 2:04 pm.

Tab 3



IN THE UNITED STATES



2016

REPORT ON THE FUTURE OF LEGAL SERVICES

IN THE UNITED STATES



2016

Cover and interior design by Amanda Fry/ABA Design

The views expressed in this report have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the ABA unless expressly noted therein.

© 2016 American Bar Association. All rights reserved.

Printed in the United States of America.

20 19 18 17 16 5 4 3 2 1

www.shopABA.org

We dedicate this report . . .

To the estimated 80 percent of the poor, and those of moderate means, without meaningful access to our justice system;

To the legal services lawyers who dedicate their careers to serve those who are less fortunate;

To the thousands of unsung lawyers who provide pro bono service to the public to further the cause of justice for all;

To the judges, public defenders, prosecutors and court personnel who work every day to serve the public in overcrowded courthouses and underfunded court systems; and

To all who seek innovative answers to enhancing access to, and the delivery of, legal services.

ABA Commission on the Future of Legal Services
AUGUST 2016

TABLE OF CONTENTS

Foreword
Acknowledgements
Executive Summary
Introduction
PART I. The Delivery of Legal Services in the United States: The Commission's Findings
A. Despite sustained efforts to expand the public's access to legal services, significant unmet needs persist
Most people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need
a. Funding of the Legal Services Corporation and other legal aid providers remains insufficient and will continue to be inadequate in the future
b. Pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs
c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need
2. The public often does not obtain effective assistance with legal problems, either because of insufficient financial resources or a lack of knowledge about when legal problems exist that require resolution through legal representation
3. The vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation
4. Many lawyers, especially recent law graduates, are un- or underemployed despite the significant unmet need for legal services
5. The traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services
6. The legal profession's resistance to change hinders additional innovations
7. Limited data has impeded efforts to identify and assess the most effective innovations in legal services delivery
B. Advancements in technology and other innovations continue to change how legal services can be accessed and delivered
Courts, bar associations, law schools, and lawyers are experimenting with innovative methods to assist the public in meeting their needs for legal services
a. Courts

• Remote Access Technology	19
Self-Help Centers	19
Online Dispute Resolution	19
Judicially-Authorized-and-Regulated Legal Services Providers	19
b. Bar Associations	24
Online Legal Resource Centers and Lawyer Referral Innovations	25
Access to Justice and Future of Legal Services Endeavors	25
c. Law Schools: Curriculum and Incubators	25
d. Lawyers, Law Firms, and General Counsel	26
Alternative Billing	26
Document Assembly and Automation	27
Legal Process Outsourcing	27
Legal Startups	27
Medical-Legal Partnerships	28
Artificial Intelligence	28
Mobile Applications	28
Nonprofits	29
Procurement Efficiencies to Lower Costs	29
Project Management and Process Improvement	29
Prepaid Legal Services Plans and Insurance Coverage	29
Unbundling of Legal Services	30
2. New providers of legal services are proliferating and creating additional choices for consumers and lawyers	30
C. Public Trust and Confidence in Obtaining Justice and in Accessing Legal Services is Compromised by Bias, Discrimination, Complexity, and Lack of Resources	31
1. The legal profession does not yet reflect the diversity of the public, especially in positions of leadership and power	31
Bias—both conscious and unconscious—impedes fairness and justice in the legal system	32
3. The complexity of the justice system and the public's lack of understanding about how it functions undermines the public's trust and confidence	33
The criminal justice system is overwhelmed by mass incarceration and over-criminalization coupled with inadequate resources	34
5. Federal and state governments have not funded or supported the court system adequately, putting the rule of law at risk	36

II. The Delivery of Legal Services in the United States: Commission's Recommendations
RECOMMENDATION 1. The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer
RECOMMENDATION 2. Courts should consider regulatory innovations in the area of legal services delivery
2.1. Courts should consider adopting the ABA Model Regulatory Objectives for the Provision of Legal Services
2.2. Courts should examine and, if they deem appropriate and beneficial to providing greater access to competent legal services, adopt rules and procedures for judicially-authorized-and-regulated legal services providers
2.3. States should explore how legal services are delivered by entities that employ new technologies and internet-based platforms and then assess the benefits and risks to the public associated with those services
2.4. Continued exploration of alternative business structures (ABS) will be useful, and where ABS is allowed, evidence and data regarding the risks and benefits associated with these entities should be developed and assessed
RECOMMENDATION 3. All members of the legal profession should keep abreast of relevant technologies
RECOMMENDATION 4. Individuals should have regular legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups
RECOMMENDATION 5. Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process
5.1. Physical and virtual access to courts should be expanded
5.2. Courts should consider streamlining litigation processes through uniform, plain-language forms and, where appropriate, expedited litigation procedures
5.3 Multilingual written materials should be adopted by courts, and the availability of qualified translators and interpreters should be expanded46
5.4. Court-annexed online dispute resolution systems should be piloted and, as appropriate, expanded
RECOMMENDATION 6. The ABA should establish a Center for Innovation
RECOMMENDATION 7. The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services
7.1. Increased collaboration with other disciplines can help to improve access to legal services 49
7.2. Law schools and bar associations, including the ABA, should offer more continuing legal education and other opportunities for lawyers to study entrepreneurship, innovation, the business and economics of law practice, and other relevant disciplines
RECOMMENDATION 8. The legal profession should adopt methods, policies, standards, and

RECOMMENDATION 9. The criminal justice system should be reformed
9.1. The Commission endorses reforms proposed by the ABA Justice Kennedy Commission and others
9.2. Administrative fines and fees should be adjusted to avoid a disproportionate impact on the poor and to avoid incarceration due to nonpayment of fines and fees
9.3. Courts should encourage the creation of programs to provide training and mentoring for those who are incarcerated with a goal of easing re-entry into society as productive and law-abiding citizens
9.4. Minor offenses should be decriminalized to help alleviate racial discrepancies and over-incarceration
9.5. Public defender offices must be funded at levels that ensure appropriate caseloads5
RECOMMENDATION 10. Resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public's unmet needs for legal services 54
10.1. Legal aid and pro bono efforts must be expanded, fully-funded, and better-promoted 54
10.2. Public education about how to access legal services should be widely offered by the ABA, bar associations, courts, lawyers, legal services providers, and law schools
RECOMMENDATION 11. Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives 50
RECOMMENDATION 12. The ABA and other bar associations should make the examination of the future of legal services part of their ongoing strategic long-range planning
Conclusion
APPENDIX 1. Resolution 105 and Report on ABA Model Regulatory Objectives for the Provision of Legal Services, adopted February 201659
APPENDIX 2. Commission Work Plan and Methodology
1. Working Groups
2. Hearings
3. Issues Papers and Solicitation of Comments
a. Issues Paper on the Future of Legal Services, November 2014
b. Issues Paper on New Categories of Legal Services Providers, October 2015 60
c. Issues Paper on Legal Checkups, March 201660
d. Issues Paper on Unregulated LSP Entities, March 201660
e. Issues Paper on Alternative Business Structures, April 2016
4. Grassroots Meetings and Futures Presentations
5. Commission Webinars



6. Communications
7. Commission White Papers
8. Additional Resources
APPENDIX 3. National Summit on Innovation in Legal Services
APPENDIX 4. State and Local Bar Association Work on Access to Justice and the Future of Legal Services
APPENDIX 5. Joint Statement by William C. Hubbard and Sherrilyn Ifill
Citations

FOREWORD

"We must open our minds to innovative approaches and to leveraging technology in order to identify new models to deliver legal services. Those who seek legal assistance expect us to deliver legal services differently. It is our duty to serve the public, and it is our duty to deliver justice, not just to some, but to all."

William C. Hubbard

ABA PRESIDENT 2014-15

he American public deserves accessible and affordable legal services, and the legal profession has a special obligation to advance this goal. From 2014 to 2016, the American Bar Association Commission (Commission) on the Future of Legal Services examined various reasons why meaningful access to legal services remains out of reach for too many Americans. The Commission also studied traditional and evolving delivery models for legal services, scrutinized the strengths and weaknesses of the profession and justice system that impact the delivery of legal services, and developed recommendations for ensuring that the next generation of legal services more effectively meets the public's needs.

The core values of the legal profession guided the Commission as it went about its work. Those values focus, first and foremost, on serving the interests of the public and ensuring justice for all. For this reason, the Commission's efforts have centered on how consumers perceive the delivery of legal services and how the public can be better served. The Commission's recommendations reflect this mindset and identify changes that benefit the public, even if those changes cause disruption or discomfort to the profession.

This Report on the Future of Legal Services in the United States documents the Commission's findings and recommendations. The Commission believes that the recommendations, if implemented, can greatly improve how legal services are delivered and accessed, thus advancing the cause of justice and the rule of law. Through bold action and innovation, universal access to meaningful assistance for essential legal needs is within our collective reach.

Judy Perry Martinez, Chair
ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES

Andrew Perlman, Vice Chair
ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES

ACKNOWLEDGEMENTS

he ABA Commission on the Future of Legal Services would not have existed without the fore-sight of William C. Hubbard, ABA President 2014-15. His vision and leadership were essential to creating the Commission and setting its mandate. The Commission also is deeply grateful to Paulette Brown, ABA President 2015-16, and Linda A. Klein, ABA President-Elect, for their support of the Commission's efforts.

The Commission is grateful to its Chair, Judy Perry Martinez, and Vice Chair, Andrew Perlman, for their skillful leadership; the Reporters, Ben Cooper and Renee Knake; and ABA staff, especially Janet Jackson, Katy Englehart, Angela LaCruise, Larnetta Buck, Art Garwin, Ellyn Rosen, Will Hornsby, and Terry Brooks. Special thanks also go to the Commission's working group and project team chairs: Karl Camillucci, Elizabeth Chambliss, Tim Elder, Paula Littlewood, Chief Justice Barbara Madsen, Randy Noel, Mike Pellicciotti, Maury Poscover, Dan Rodriguez, James Sandman, Dwight Smith, and Ron Staudt. Allen Clarkson and Sarah McCormick provided invaluable research assistance.

Chair

Judy Perry Martinez New Orleans, LA

Vice Chair

Andrew Perlman Suffolk University Law School Boston, MA

ABA President, 2014-15

William C. Hubbard Nelson Mullins Riley & Scarborough LLP Columbia, SC

Commissioners

Mark D. Agrast American Society of International Law Washington, DC

Kim J. Askew K&L Gates LLP Dallas, TX

Ruth Hill Bro

Chicago, IL

Karl Camillucci

Taft Stettinius & Hollister LLP Chicago, IL

Elizabeth Chambliss

University of South Carolina School of Law Columbia, SC

Hon. Jeremy D. Fogel

Federal Judicial Center Washington, DC

Paula J. Frederick

State Bar of Georgia Atlanta, GA

Phoebe A. Haddon

Rutgers University-Camden Camden, NJ

Margaret Hagan

Stanford University Law School Stanford, CA

Dana M. Hrelic

Horton Shields & Knox PC Hartford, CT

Hon. Wallace B.

Jefferson

Alexander Dubose Jefferson & Townsend LLP Austin, TX

Stephanie L. Kimbro

Stanford Law School Stanford, CA

Paula Littlewood

Washington State Bar Association Seattle, WA

Hon. Lora J. Livingston

261st Judicial District Court Austin, TX

Hon. Barbara A. Madsen

Washington State Supreme Court Olympia, WA

Mary Campbell McQueen

National Center for State Courts

Williamsburg, VA

Randall D. Noel

Butler Snow LLP Memphis, TN

Michael Pellicciotti

Office of the Attorney General Olympia, WA

Maury B. Poscover

Husch Blackwell LLP Saint Louis, MO

Daniel B. Rodriguez

Northwestern University School of Law Chicago, IL

Stephen A. Saltzburg

George Washington University Law School Washington, DC

James Sandman

Legal Services Corporation Washington, DC

Dwight L. Smith

Dwight L. Smith PLLC Tulsa, OK

Ronald W. Staudt

IIT Chicago-Kent College of Law Chicago, IL

Carmen Harper Thomas

Nelson Mullins Riley & Scarborough LLP Columbia, SC

Frederic Stephen Ury

Ury & Moskow Fairfield, CT

Mary E. Vandenack

Parsonage Vandenack Williams LLC Omaha, NE

2014-15 Board of Governors Liaison

Paulette Brown

Locke Lord LLP Morristown, NJ

2015-16 Board of Governors Liaison

Linda A. Klein

Baker Donelson, PC Atlanta, GA

Liaisons

Chad E. Burton

Law Practice Division CuroLegal Dayton, OH

Lisa Colpoys

Standing Committee on Delivery of Legal Services Illinois Legal Aid Online Chicago, IL

Timothy Elder

Commission on Disability Rights TRE Legal Practice, LLC Fremont, CA

Carmen M. Garcia

Hispanic National Bar Association Trenton, NJ

David A. Larson

Section of Dispute Resolution Mitchell Hamline School of Law St. Paul, MN

Paul W. Lee

National Asian Pacific American Bar Association Goodwin Procter LLP Boston, MA

Hon. Jodi B. Levine

Judicial Division,
National Conference of
the Administrative Law
Judiciary
Social Security
Administration
Oklahoma City, OK

Hon. Julian Mann III

Judicial Division,
National Conference of
the Administrative Law
Judiciary
Office of Administrative
Hearings
Raleigh, NC

Hon. Mark D. Martin

Judicial Division
North Carolina Supreme
Court
Raleigh, NC

Alfreda Robinson

National Bar Association George Washington University Law School Washington, DC

Robert O. Saunooke

National Native American Bar Association Miramar, FL

Hope Cahill Todd

Standing Committee on Ethics and Professional Responsibility District of Columbia Bar Washington, DC

Special Advisors

Helaine Barnett

New York Permanent Commission on Access to Justice New York, NY

Robert Nelson

American Bar Foundation Chicago, IL

Marty Smith

MetaJure, Inc. Seattle, WA

David B. Wilkins

Harvard Law School Cambridge, MA

Reporters

Benjamin P. Cooper

University of Mississippi School of Law University, MS

Renee Newman Knake

University of Houston Law Center Houston, TX

Staff

Terry Brooks

American Bar Association Chicago, IL

Larnetta Buck

American Bar Association Chicago, IL

Katy Englehart

American Bar Association Chicago, IL

Art Garwin

American Bar Association Chicago, IL

Will Hornsby

American Bar Association Chicago, IL

Janet L. Jackson

American Bar Association Chicago, IL

Angela LaCruise

American Bar Association Chicago, IL

Ellvn Rosen

American Bar Association Chicago, IL

EXECUTIVE SUMMARY

"Just because we cannot see clearly the end of the road, that is no reason for not setting out on the essential journey. On the contrary, great change dominates the world, and unless we move with change we will become its victims."

Robert F. Kennedy, Farewell Statement, Warsaw, Poland
(AS REPORTED IN THE NEW YORK TIMES, JULY 2, 1964)

n August 2014, the Commission on the Future of Legal Services set out to improve the de-Livery of, and access to, legal services in the United States. The findings and recommendations of the two-year undertaking are contained in this Report on the Future of Legal Services in the United States and are a product of the Commission's full membership, including commissioners, special advisors, liaisons, reporters, and ABA staff. This is a consensus document that was not authored by a single individual. Rather, the Report represents the expertise and input of the entire Commission, as informed by written comments supplied by the public and the profession, testimony at public hearings and meetings, grassroots events across the country, a national summit on innovation in legal services, webinars, and dozens of presentations on the Commission's work at which the public's and profession's input was sought. The Commission recognizes that portions of this Report may be viewed as controversial by some or not sufficiently bold by others, but the Commission believes that significant change is needed to serve the public's legal needs in the 21st century.

This Report contains a broad array of recommendations for improving how legal services are delivered and accessed. The Report summarizes what the Commission learned, identifies some of the many projects already underway to address existing problems, and offers recommendations for future actions.

The Executive Summary briefly lists the Commission's Findings and Recommendations, with greater explanation provided in the pages that follow. Despite the length of this Report, the Commission could not provide exhaustive detail on each finding and recommendation due to the volume of information the Commission reviewed and the breadth of the Commission's conclusions. The Report includes footnotes and hyperlinks to provide readers with additional detail, and the Commission's website1 includes many other resources, such as an online Inventory of Innovations. Readers are encouraged to also view the online version of the Report at ambar.org/ABAFuturesReport, which features interactive videos and other media in addition to the content contained in this written document.

The Commission's Findings

- A. Despite sustained efforts to expand the public's access to legal services, significant unmet needs persist.
 - 1. Most people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.
 - a. Funding of the Legal Services Corporation and other legal aid providers remains insufficient and will continue to be inadequate in the future.
 - b. Pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs.
 - c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need.
 - The public often does not obtain effective assistance with legal problems, either because of insufficient financial resources or a lack of knowledge about when legal problems exist that require resolution through legal representation.
 - The vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation.
 - Many lawyers, especially recent law graduates, are unemployed or underemployed despite the significant unmet need for legal services.
 - 5. The traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services.
 - 6. The legal profession's resistance to change hinders additional innovations.
 - 7. Limited data has impeded efforts to identify and assess the most effective innovations in legal services delivery.

- B. Advancements in technology and other innovations continue to change how legal services can be accessed and delivered.
 - Courts, bar associations, law schools, and lawyers are experimenting with innovative methods to assist the public in meeting their needs for legal services.
 - a. Courts
 - Remote Access Technology
 - Self-Help Centers
 - Online Dispute Resolution
 - Judicially-Authorized-and-Regulated Legal Services Providers
 - b. Bar Associations
 - Online Legal Resource Centers and Lawyer Referral Innovations
 - Access to Justice and Future of Legal Services Endeavors
 - c. Law Schools: Curriculum and Incubators
 - d. Lawyers, Law Firms, and General Counsel
 - Alternative Billing
 - Document Assembly and Automation
 - Legal Process Outsourcing
 - Legal Startups
 - Medical-Legal Partnerships
 - Artificial Intelligence
 - Mobile Applications
 - Nonprofits
 - Procurement Efficiencies to Lower Costs
 - Project Management and Process Improvement
 - Prepaid Legal Services Plans and Insurance Coverage
 - Unbundling of Legal Services
 - New providers of legal services are proliferating and creating additional choices for consumers and lawyers.

- C. Public trust and confidence in obtaining justice and in accessing legal services is compromised by bias, discrimination, complexity, and lack of resources.
 - 1. The legal profession does not yet reflect the diversity of the public, especially in positions of leadership and power.
 - Bias—both conscious and unconscious impedes fairness and justice in the legal system.
- 3. The complexity of the justice system and the public's lack of understanding about how it functions undermines the public's trust and confidence.
- 4. The criminal justice system is overwhelmed by mass incarceration and over-criminalization coupled with inadequate resources.
- 5. Federal and state governments have not funded or supported the court system adequately, putting the rule of law at risk.

The Commission's Recommendations

RECOMMENDATION 1. The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer.

RECOMMENDATION 2. Courts should consider regulatory innovations in the area of legal services delivery.

- 2.1. Courts should consider adopting the ABA Model Regulatory Objectives for the Provision of Legal Services.
- 2.2. Courts should examine, and if they deem appropriate and beneficial to providing greater access to competent legal services, adopt rules and procedures for judicially-authorized-and-regulated legal services providers.
- 2.3. States should explore how legal services are delivered by entities that employ new technologies and internet-based platforms and then assess the benefits and risks to the public associated with those services.
- 2.4. Continued exploration of alternative business structures (ABS) will be useful, and where ABS is allowed, evidence and data regarding the risks and benefits associated with these entities should be developed and assessed.

RECOMMENDATION 3. All members of the legal profession should keep abreast of relevant technologies.

RECOMMENDATION 4. Individuals should have regular

legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups.

RECOMMENDATION 5. Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process.

- 5.1. Physical and virtual access to courts should be expanded.
- 5.2. Courts should consider streamlining litigation processes through uniform, plain-language forms and, where appropriate, expedited litigation procedures.
- 5.3 Multilingual written materials should be adopted by courts, and the availability of qualified translators and interpreters should be expanded.
- 5.4. Court-annexed online dispute resolution systems should be piloted and, as appropriate, expanded.

RECOMMENDATION 6. The ABA should establish a Center for Innovation.

RECOMMENDATION 7. The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.

7.1. Increased collaboration with other disciplines can help to improve access to legal services.

7.2. Law schools and bar associations, including the ABA, should offer more continuing legal education and other opportunities for lawyers to study entrepreneurship, innovation, the business and economics of law practice, and other relevant disciplines.

RECOMMENDATION 8. The legal profession should adopt methods, policies, standards, and practices to best advance diversity and inclusion.

RECOMMENDATION 9. The criminal justice system should be reformed.

- 9.1. The Commission endorses reforms proposed by the ABA Justice Kennedy Commission and others.
- 9.2. Administrative fines and fees should be adjusted to avoid a disproportionate impact on the poor and to avoid incarceration due to nonpayment of fines and fees.
- 9.3. Courts should encourage the creation of programs to provide training and mentoring for those who are incarcerated with a goal of easing re-entry into society as productive and law-abiding citizens.

- 9.4. Minor offenses should be decriminalized to help alleviate racial discrepancies and over-incarceration.
- 9.5. Public defender offices must be funded at levels that ensure appropriate caseloads.

RECOMMENDATION 10. Resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public's unmet needs for legal services.

- 10.1. Legal aid and pro bono efforts must be expanded, fully-funded, and better-promoted.
- 10.2. Public education about how to access legal services should be widely offered by the ABA, bar associations, courts, lawyers, legal services providers, and law schools.

RECOMMENDATION 11. Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives.

RECOMMENDATION 12. The ABA and other bar associations should make the examination of the future of legal services part of their ongoing strategic long-range planning.

Note about terminology used in this Report: The term *bar association* includes local, state, federal, territorial, and specialty bar associations. The term *court* includes municipal, state, tribal and federal courts; administrative hearing bodies; arbitration panels; and other non-judicial proceedings. The term *legal profession* includes bar associations, courts, lawyers, legal services agencies, and law schools.

INTRODUCTION

"It is up to us to demonstrate whether we will be able to adapt the basically sound mechanisms of our systems of law to new conditions."

Chief Justice Warren Burger *THE POUND CONFERENCE* 1976²

In 1906, at the Annual Meeting of the American Bar Association, the legal scholar Roscoe Pound presented his renowned speech, "The Causes of Popular Dissatisfaction with the Administration of Justice." Seventy years later, Chief Justice Warren Burger, standing at the site of Pound's speech in St. Paul, Minnesota, brought together a historic gathering of jurists and legal scholars to discuss ways to address popular dissatisfaction with the American legal system and to examine how to make the justice system more responsive to the public. The Pound Conference sparked many innovations, including helping to advance the modern alternative dispute resolution movement.

Roscoe Pound and Chief Justice Burger understood that the best way for the profession to continue to resolve society's conflicts is to lead. Forty years after the Pound Conference, the legal profession is at a critical juncture in responding to new conditions that will determine the future of legal services. Once again, the legal profession must lead.

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and

are forced to either represent themselves or avoid accessing the legal system altogether. Even those who can afford a lawyer often do not use one because they do not recognize that their problems have a legal dimension or because they prefer less expensive alternatives. For those whose legal problems require use of the courts but who cannot afford a lawyer, the persistent and deepening underfunding of the court systems further aggravates the access to justice crisis, as court programs designed to assist these individuals are being cut or not implemented in the first place.

At the same time, technology, globalization, and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers are emerging, online and offline, to offer a range of services in dramatically different ways. The legal profession, as the steward of the justice system, has reached an inflection point. Without significant change, the profession cannot ensure that the justice system serves everyone and that the rule of law is preserved. Innovation, and even unconventional thinking, is required.

The justice system is overdue for fresh thinking about formidable challenges. The legal profession's efforts to address those challenges have been hindered by resistance to technological changes and other innovations. Now is the time to rethink how the courts and the profession serve the public. The profession must continue to seek adequate funding for core functions of the justice system. The courts must be modernized to ensure easier access. The profession must leverage technology and other innovations to meet the public's legal needs, especially for the underserved. The profession must embrace the idea that, in many circumstances, people other than lawyers can and do help to improve how legal services are delivered and accessed.

The American Bar Association is well positioned to lead this effort. The ABA can inspire innovation, suggest new models for regulating legal services, encourage new methods for delivering legal services and educating lawyers, and foster the development of financially viable approaches to delivering legal services that more effectively meet the public's needs.

To advance these essential goals, in August 2014, then-ABA President William C. Hubbard established the Commission on the Future of Legal Services. Comprised of prominent lawyers from a wide range of practice settings, judges, academics, and other professionals with varied perspectives on how legal services are delivered and accessed in the United States, the Commission's charge included the following tasks:

- Conduct a series of community-based grassroots meetings;
- Convene a national summit designed to encourage bar leaders, judges, court personnel, practitioners, businesses, clients, technologists, and innovators to share their visions for more efficient and effective ways to deliver legal services;
- Seek information at the Commission's public meetings and solicit comments from the legal profession and public;
- Analyze and synthesize the insights and ideas gleaned from this process;

- Establish internal working groups to assess new models for accessing and delivering legal services; and
- Examine and, as appropriate, propose new approaches to legal services delivery that are not constrained by traditional models and are rooted in the essential values of protecting the public, enhancing diversity and inclusion, and pursuing justice for all.

This Report summarizes the Commission's efforts in taking on this charge. Part I sets forth the Commission's Findings on the current realities about the delivery of, and the public's access to, legal services. Part II describes the Commission's Recommendations. These Findings and Recommendations are the Commission's; they are not policies of the ABA or its House of Delegates unless noted. Rather, this Report is designed to encourage thoughtful review of the status quo and spur changes that are in the public's interest.

PART I. THE DELIVERY OF LEGAL SERVICES IN THE UNITED STATES: THE COMMISSION'S FINDINGS

"As leaders in our society, lawyers have a responsibility to uphold the rule of law. When nearly half of all young people do not believe our justice system is fair, we have fallen short of our responsibility. Lawyers must use the incredible power given them by their law license to effectuate positive change. We must keep in mind what Charles Hamilton Houston taught us, 'a lawyer is either a social engineer or a parasite on society.' We must be social engineers and change the perception of our justice system. Maintenance of the rule of law requires it."

Paulette Brown
ABA PRESIDENT 2015-16

uring its first year, the Commission sought to learn as much as possible about the American public's challenges in accessing legal services. Several state and local bar associations were simultaneously engaged in a similar effort. More began to engage in their own processes in response to the Commission's grassroots meetings and events, which were held in over 70 locations. The efforts of these bar associations informed the Commission's work, and a list of state and local bar association efforts is contained in the Appendix.

The Commission sought input from lawyers, judges, clients, academics, the public, and thought-leaders from other disciplines. This input included: (1) grassroots meetings; (2) the Commis-

sion's National Summit on Innovation in Legal Services convened at Stanford Law School in May 2015; (3) more than 250 comments submitted by members of the legal profession and the public in response to multiple issues papers released by the Commission; (4) testimony at hearings conducted at ABA Midyear and Annual Meetings; (5) a series of webinars delivered by experts on emerging issues in legal services delivery; (6) a public opinion and focus group survey conducted in partnership with the National Center for State Courts; (7) sixteen white papers by subject matter experts that assess existing research on legal services delivery and identify additional research needs;3 and (8) ABA leaders, counsel, and staff. The Commission drew upon the expertise of its members, reporters, special advisors, and liaisons, which included

state and federal judges and administrative law judges; practicing attorneys from solo, mid-sized, and large law firms; academics; experts on innovation in legal services; and leaders from national organizations, such as the Legal Services Corporation, National Conference of Chief Justices, Federal Judicial Center, American Bar Foundation, National Bar Association, Hispanic National Bar Association, National Asian Pacific American Bar Association, National Native American Bar Association, and representatives from the disability legal community. The Commission also drew upon dialogues with leaders from foreign jurisdictions

undertaking futures initiatives. Further detail about the Commission's extensive efforts to gather information on the public's legal needs can be found in the Appendix and on the Commission's website.⁴

The Commission's Findings, which are based upon this extensive outreach, research, and study, are described below with some, but not exhaustive, detail. The Report conveys as concisely as possible the essence of the Commission's Findings and uses footnotes and hyperlinks to direct readers to more detailed information.

The Findings

A. Despite sustained efforts to expand the public's access to legal services, significant unmet needs persist.

Over the past century, numerous calls for greater access to legal services have been made. In response, a wealth of initiatives, many highly successful, have aimed to address the public's legal needs. Lawyers in various settings have undertaken these efforts. Some lawyers have dedicated their careers to full-time service of people who need legal assistance and cannot afford a lawyer. Other lawyers contribute pro bono hours in their local communities and even outside their home jurisdictions. They respond to emergency legal needs in times of disaster or simply assist someone who asks for help and cannot afford legal assistance. These lawyers can be found in every possible practice setting, including solo practices, law firms of all sizes, and corporate legal departments.

The Legal Services Corporation (LSC)—the independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans⁵—has been a beacon of justice for the underserved. Despite its unrelenting work on behalf of the poor, inadequate funding remains a barrier to helping every poor person with a legal need. Moreover, these efforts do not reach millions of individuals of moderate means

who have legal problems and cannot afford legal solutions. Longstanding efforts, such as group and pre-paid legal plans, pro bono projects, and similar endeavors, have helped to address some of these issues, but significant gaps remain.

State supreme courts have played a key leadership role as well. The courts often collaborate with bar associations and other stakeholders, most recently in establishing access to justice commissions, which have made a measurable difference in the lives of many people.

The Commission applauds these and many other similar efforts. They have helped to ensure that more people are able to address their essential legal needs through meaningful access to legal services. Much work, however, remains to be done.

1. Most people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.

The need for basic civil legal assistance for individuals living at or below the poverty level is vast and cannot be overstated. According to the most

recent data from the U.S. Census Bureau, 63 million people—one in five Americans—met financial requirements for services provided by the LSC.10 The LSC provides funding to 134 independent non-profit legal aid programs in every state, the District of Columbia, and U.S. Territories. In 2016, income eligibility for LSC-funded legal aid-125 percent of the federal poverty guideline—is \$14,850 for an individual and \$30,375 for a family of four.11 Yet, the funding made available to LSC by Congress accommodates only a small fraction of people who need legal services. As a result, in some jurisdictions, more than eighty percent of litigants in poverty are unrepresented in matters involving basic life needs, such as evictions, mortgage foreclosures, child custody disputes, child support proceedings, and debt collection cases.12

Contrary to what many might expect, lack of basic civil legal assistance is not limited to the poor. Numerous studies show that the majority of moderate-income individuals do not receive the legal help they need. Many of the studies documenting civil legal needs in the United States are "decades old, but conservative estimates based on their reports suggest as many as half of American households are experiencing at least one significant civil justice situation at any given time."13 Scholars estimate that "[o]ver four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet."14 Moreover, moderate-income individuals often have even fewer options than the poor because they do not meet the qualifications to receive legal aid.

One study indicated that "well over 100 million Americans [are] living with civil justice problems, many involving what the American Bar Association has termed 'basic human needs.' The ABA defines "basic human needs" cases as including matters related to shelter (for example, eviction proceedings), sustenance (for example, "denials of or termination of government payments or benefits"), safety (for example, "proceedings to obtain or enforce restraining orders"), health (for example, claims to Medicare, Medicaid, or private insurance for "access to appropriate health care for treatment of significant health problems"),

and child custody. ¹⁶ These problems "are experienced across the population, by rich and poor, young and old, men and women, all racial groups, all religions." ¹⁷ Other examples of such needs include matters involving employment, housing, relationship dissolution, bankruptcy/consumer debt, immigration, and education.

In 2006, the ABA House of Delegates adopted Resolution 112A, encouraging legislatures to "provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake." Although there has been some modest progress in this area (for example, in 2016, Connecticut passed a civil right to counsel bill to create a task force with the specific purpose of examining access to counsel in civil matters¹9) much work remains to be done.

Recent statistics illustrate the dire need for help with civil legal needs:

- Massachusetts: Civil legal aid programs turned away sixty-four percent of eligible low-income people in 2013, a fourteen percent increase from 2006, and nearly 33,000 low-income residents were denied legal representation in life-essential matters involving eviction, foreclosure, and family law, including cases of child abuse and domestic violence.²⁰
- Michigan: From 2000 to 2013, the number of people qualified for free legal aid increased by fifty-three percent to over 2 million people.²¹
- New York: In 2014, 1.8 million litigants in civil matters did not have representation for matters involving housing, family, access to health care and education, and subsistence income.²²
- Utah: In 2014, ninety-eight percent of the defendants in 66,717 debt collection cases were unrepresented, whereas ninety-six percent of the plaintiffs had a lawyer. In the same year, ninety-seven percent of the defendants in 7,770 eviction cases defended themselves,

and in only twelve percent of 14,088 divorce cases did both sides have a lawyer.²³

 Washington: In 2015, seventy percent of low-income households faced a significant civil legal issue within the past year, but three-fourths did not seek or could not obtain legal assistance.²⁴

Additional challenges exist in the criminal arena. Although most criminal defendants have a constitutional right to counsel, public defense counsel in many jurisdictions are under-resourced and over-worked.²⁵

To better understand the public's unmet need for legal services, the Commission not only examined existing research and studies, but also conducted an independent survey. In collaboration with the National Center for State Courts (NCSC), the Commission held two focus group studies and undertook a national public opinion survey on access to legal services (the "ABA/NCSC Survey 2015"). The focus groups and poll were designed to provide more insight into public attitudes and concerns about access to legal services, and to obtain input not only from the legal profession, but also from consumers of legal services. As discussed more fully below, the ABA/NCSC Survey 2015 further evidences significant unmet legal needs.

a. Funding of the Legal Services Corporation and other legal aid providers remains insufficient and will continue to be inadequate in the future.

Congress has never fully funded the LSC to adequately address the civil legal needs of people with low incomes. In recent years, the LSC budget has been especially compromised, with Congressional appropriations decreasing from \$420 million in 2010 to \$365 million in 2014 at the very time that needs were increasing. Had LSC's funding kept pace with inflation compared to appropriations in the mid-1990's, the current annual funding would be more than \$650 million. Stimates suggest that full funding for LSC to address all unmet legal needs of those living in poverty would require an appropriation far exceeding \$650 million. Even if Congress were to fully fund

the LSC to provide the necessary legal services to all who meet income eligibility requirements, a significant need remains for moderate-income individuals who are not eligible for LSC-funded programs. Full funding also would not address congressional restrictions on the use of LSC funds to support certain types of cases or clients.

Although the LSC network is the largest source of funding for civil legal aid, funding also exists at the state level from governments and private sources. Unfortunately, funding varies considerably by state, so the public's access to basic services is uneven. It has been observed that "geography is destiny" in that the legal "services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live" and whether funding has been allocated to their particular need.28 Moreover, even in the most generous jurisdictions, state governments allocate insufficient resources to ensure meaningful access to legal services for all who need them. At the same time, there have been significant declines in another key funding source for state-specific funding for civil legal services: the Interest on Lawyers Trust Accounts (IOLTA), programs in all 50 states and the District of Columbia, which are meant to fund civil legal aid programs with the interest generated from client funds held by lawyers. For example, in Massachusetts alone, the economic downturn reduced IOLTA funding from \$31.8 million in 2007 to an estimated \$4.5 million in 2015.29

b. Pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs.

The ABA's 2013 Report on the Pro Bono Work of America's Lawyers documents "the legal profession's longstanding and ongoing commitment to pro bono legal services as a core value." Approximately eighty percent of the attorneys surveyed report providing at least some pro bono service, with an average of approximately seventy hours per year for those who do so. 31 For example, many

solo practitioners and small firm lawyers regularly engage in pro bono and "low bono" efforts in their communities. Paralegals also make significant contributions to pro bono work.32 Many large law firms encourage pro bono volunteerism and initiatives,33 such as the tentatively-titled ABA Legal Answers,34 a national pro bono web service based upon the successful Tennessee Online Pro Bono website. More recently, corporate legal departments have become more active in delivering pro bono legal services, in part because of useful regulatory changes that enable such efforts.35 Even with the profession's deep commitment to pro bono and further innovations, pro bono work alone will not resolve the tremendous need for civil legal representation. Data shows that annually "U.S. lawyers would have to increase their pro bono efforts ... to over nine hundred hours each to provide some measure of assistance to all households with legal needs."36

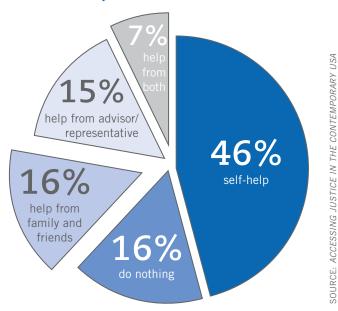
c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need.

Numerous programs and providers across the country offer legal assistance to moderate-income individuals via a wide variety of delivery models. The ABA Standing Committee on the Delivery of Legal Services maintains a list of nearly 100, which is growing.³⁷ The delivery models range from offering legal services in cafés, coffee houses, and courts to targeting special needs, such as eviction, medical issues, and wills. Even so, while many of these efforts have had success, the need for legal assistance for moderate income individuals remains significant.

2. The public often does not obtain effective assistance with legal problems, either because of insufficient financial resources or a lack of knowledge about when legal problems exist that require resolution through legal representation.

Individuals of all income levels often do not recognize when they have a legal need, and even when they do, they frequently do not seek legal assistance. The report Accessing Justice in the Con-

Civil Justice Issues



temporary USA: Findings from the Community Needs and Services Study,38 published in 2014, details the scope and nature of civil justice issues that people confront. This study found that forty-six percent of people are likely to address their problems themselves, sixteen percent of people do nothing, and sixteen percent get help from family or friends.39 Only fifteen percent sought formal help, and only sixteen percent even considered consulting a lawyer.⁴⁰ As the study reported: "these are troubles that emerge 'at the intersection of civil law and everyday adversity,' involving work, finances, insurance, pensions, wages, benefits, shelter, and the care of young children and dependent adults, among other core matters."41 When asked why they do not seek out a lawyer, most individuals reply that they "do not think of their justice problems as legal" and do not recognize their problems as having legal solutions.42 Although the study did not delve into the severity of the legal problems people confront and left open the question of how many would benefit from formal assistance (including from a lawyer), the research does demonstrate what some experts refer to as a latent legal market—that is, a market for legal services that is currently untapped.43

Research also showed the limitations of current efforts to reach out to those with legal needs.

Certain populations are particularly vulnerable when faced with legal problems, especially the poor, people with limited physical and mental abilities, the elderly, immigrants and others with limited English language skills, people living in rural communities, and victims of domestic and sexual violence.⁴⁴ Many people with limited financial resources do not have access to legal representation, which adversely affects their views of law, citizenship, and civic engagement. Similarly, all individuals without proficiency in English have difficulty navigating the justice system unless they have adequate access to interpreters and related resources.

Cost also can be a major barrier, although the available evidence on this issue is somewhat contradictory. Concrete data and research studies on the actual costs of routine legal services are difficult to find, but at least one reveals that many services may actually be affordable for middleincome families. 45 Nevertheless, in the ABA/NCSC Survey 2015, "financial cost was the single most common factor cited for not seeking legal services when facing a challenge."46 Financial cost included not only direct financial cost but also indirect economic costs, such as time away from work or the difficulty of making special arrangements for childcare. Beyond this, focus group respondents also noted the costs of "a slow-moving legal process and inexplicable delays," which left them with a "sense of disrespect ... as supposed customers of the legal system."47 While the Accessing Justice Study concluded that "Americans do not typically perceive cost as a barrier to action when considering how to respond to their own civil justice situations" they do perceive "cost as a barrier in the abstract for at least some people."48 Notably, nearly sixty percent of respondents agreed with the statement: "lawyers are not affordable for people on low incomes."49 Moreover, a majority of respondents in the ABA/NCSC 2015 Survey indicated they would prefer to handle a problem themselves.⁵⁰ According to the ABA Self-Help Center Census, 3.7 million people turn to self-help centers annually. Another reason individuals may not turn to lawyers is a lack of trust.

In short, evidence suggests that:

- Civil legal needs are common and widespread.
- Many legal needs involve "bread-and-butter issues" that are at the core of contemporary life, affecting livelihood, shelter, or the care and custody of dependents.
- People who are vulnerable or disadvantaged often report more of these civil legal needs and a greater incidence of adverse outcomes.
- Most civil justice situations will never involve contact with a lawyer or a court.
- The most important reasons that people do not take their civil legal needs to lawyers or courts are:
 - they do not think the issues are legal or do not believe that the law offers a solution; and
 - they often believe that they understand their situations and are taking appropriate actions.
- The cost of legal services or court processes affects how people address their civil legal needs.⁵¹

3. The vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation.

The unmet need for legal services adversely impacts all users of the justice system, particularly in state courts. The Conference of Chief Justices has reported that large numbers of unrepresented litigants clog the courts, consume the time of court personnel, increase the legal fees of opposing parties due to disruptions and delays, increase the number of cases that advance to litigation, and result in cases decided on technical errors rather than the merits.⁵² These problems affect all litigants and are exacerbated by a lack of uniform and reliable forms.

4. Many lawyers, especially recent law graduates, are unemployed or underemployed despite the significant unmet need for legal services.

As ABA Past President James Silkenat observed in 2013 in establishing the Legal Access Job Corps Task Force to place recent law graduates in underserved communities, "Our nation is facing a paradox involving access to justice. On the one hand, too many people with low and moderate incomes cannot find or afford a lawyer to defend their legal interests, no matter how urgent the issue. On the other hand, too many law graduates in recent years have found it difficult to gain the practical experience they need to enter practice effectively."53 The New York Times reported that "forty-three percent of all 2013 law school graduates did not have long-term full-time legal jobs nine months after graduation."54 The Commission found that the paradox noted by Silkenat continues, notwithstanding Legal Access Jobs Corps and similar efforts by state bars and others. Data from the U.S. Bureau of Labor Statistics indicate that unemployment for recent law graduates remains significantly higher compared to the national average across other labor categories.55

5. The traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services.

Experts on the legal services marketplace identify the traditional law practice business model as a major obstacle to increasing access to legal services. ⁵⁶ The traditional model is built upon individualized, one-on-one lawyering, through solo and law firm practices that bill for services on an hourly basis. The billable hour model, which enables lawyers to earn more money if they spend more time on a matter, arguably provides less of an incentive to develop more efficient delivery methods than other ways to charge for services (for example, flat fees). This model also does not easily allow for innovations in scalability, branding, marketing, and technology that are found in most industries. ⁵⁷

"In order to ensure that the public has meaningful access to justice, the next generation of lawyers must be prepared to develop innovative approaches to the delivery of legal services. Doing so will help lawyers thrive, while ensuring that we serve the public's interests."

Dana M. Hrelic
SECRETARY, ABA YOUNG LAWYERS DIVISION
HARTFORD, CT

Some have argued that broad-reaching restrictions on the unauthorized practice of law,⁵⁸ which limit who can offer legal services, also have adverse effects on the delivery of legal services. Although many legal problems require a full-service lawyer, others do not. The Commission found examples of providers other than lawyers who are delivering cost-effective and competent legal help.⁵⁹

Some have argued that the prohibition on partnership and co-ownership/investment with nonlawyers is also inhibiting useful innovations. Jurisdictions outside the United States are experimenting with new forms of alternative business structures (ABS) in an effort to fuel innovation in the delivery of legal services. 60 In the United States, only two jurisdictions permit forms of ABS: the District of Columbia⁶¹ and Washington State.62 Although D.C. permits nonlawyer ownership, very few ABS firms have organized there because of the restrictions on ABS outside of D.C.63 Nonlawyer ownership in Washington State is limited to Limited License Legal Technicians (LLLT), who may own a minority interest in law firms.64 Outside of the United States, more jurisdictions permit ABS. Australia, England and Wales, Scotland, Italy, Spain, Denmark, Germany, the Netherlands, Poland, Spain, Belgium, Singapore, New Zealand and some Canadian provinces permit ABS in one form or another.65

6. The legal profession's resistance to change hinders additional innovations.

"The legal profession tends to look inward and backward when faced with crisis and uncertainty," wrote one scholar in documenting the American legal profession's historical resistance to change. This fact extends back to the early 1900s, even when other industries and society as a whole were in the midst of a significant transformation. As Henry P. Chandler observed in the early 1930s:

I am by no means blind to the failings of the legal profession. ... I know that we are often too conservative. We don't realize that the world is changing. We don't sufficiently look ahead. Instead of trying to help in so shaping changes that they accomplish benefits with a minimum of disturbance, we often stand stubbornly for the maintenance of methods that have been outworn.⁶⁷

Chandler's observation mirrors Karl Llewellyn's 1938 critique of the profession: "Specialized work, mass-production, cheapened production, advertising and selling—finding the customer who does not know he wants it, and making him want it: these are the characteristics of the age. Not, yet, of the Bar." Of course, this same critique was true at the turn of the 20th century, when Roscoe Pound famously described how the legal profession's resistance to change directly contributed to the public's dissatisfaction with the justice system in his speech, "The Causes of Popular Dissatisfaction with the Administration of Justice."

The legal profession continues to resist change, not only to the public's detriment but also its own. During the Commission's public hearings and the ABA House of Delegates floor debate on Model Regulatory Objectives for the Provision of Legal Services, 69 as well as breakout sessions at the National Summit on Innovation in Legal Services and grassroots legal futures meetings across the country, the Commission repeatedly heard similar remarks about the profession's delayed adoption of, if not outright resistance to, innovations in technology, systems process improvement, and other developments that could benefit

consumers of legal service but would affect traditional ways of delivering legal services. A 2016 study examining the state of the legal market observed: "At least since the onset of the recession in 2008, law firm clients have increasingly demanded more efficiency, predictability, and cost effectiveness in the delivery of the legal services they purchase. In the main, however, law firms have been slow to respond to these demands, often addressing specific problems when raised by their clients but failing to become proactive in implementing the changes needed to genuinely meet their clients' overall

"Solos must embrace unprecedented and exponentially evolving technology as an opportunity rather than as an impediment to the delivery of meaningful, affordable, and quality legal services."

Dwight L. Smith

PAST CHAIR, ABA SOLO, SMALL FIRM, AND GENERAL PRACTICE DIVISION TULSA, OK

concerns."⁷⁰ Consequently, the study reported, "clients have chosen to 'vote with their feet' by reducing the volume of work referred to outside counsel and by finding other more efficient and cost effective ways of meeting their legal needs."⁷¹

This resistance to change is seen outside law firms as well. Some regulators of the legal profession have been hesitant to explore whether to allow new business models or limited licensing programs. Legal aid providers sometimes resist adoption of document automation and instead continue to adhere narrowly to the one-lawyer/one-client model. Courts at all levels, plagued by ongoing cuts to their funding, sometimes decline to review possible improvements, because the review and potential implementation of such improvements might risk further dilution of already scarce resources.

7. Limited data have impeded efforts to identify and assess the most effective innovations in legal services delivery.

"Ongoing, systematic research ... is an essential component of improving the quality and availability" of legal services. 72 Yet, systematic research on the current delivery of legal services—especially services for "ordinary individuals"—is strikingly limited. 73 Given the rapid pace of change fueled by technology and consumer demands for efficiency, it is impossible for the ABA and other bar associations to explore every potential innovation in the delivery of legal services. As observed by the National Legal Aid and Defender Association, in the absence of "hard

evidence regarding which delivery initiatives actually meet the needs of the people we are trying to serve, the ability to address the nation's huge justice gap will be seriously hampered."74 Fortunately, academic and federal governmental interest in "access to justice" research is increasing,75 with coordinated efforts to set priorities and develop research standards in the field.76 Increasingly, researchers are also collaborating with legal services providers to assess existing services and guide innovation.77 The Commission's fact-finding has benefitted enormously from these efforts. The Commission strongly supports "evidence-based" assessment of both new and existing forms of legal services delivery, as is apparent from its recommendations.

B. Advancements in technology and other innovations continue to change how legal services can be accessed and delivered.

Technology has disrupted and transformed virtually every service area, including travel, banking, and stock trading. The legal services industry, by contrast, has not yet fully harnessed the power of technology to improve the delivery of, and access to, legal services.78 The impact of technology elsewhere has led academics and experts on the legal profession to conclude that the profession is "at the cusp of a disruption: a transformative shift that will likely change the practice of law in the United States for the foreseeable future, if not forever."79 This is a transformation with "profound impacts on not just the legal profession, but also on clients as well as the broader society."80 In short, lawyers will deliver legal services in new ways, and these changes will create unique opportunities to "improve access to justice in communities not traditionally served by lawyers and the law"81 and to offer better value to clients who regularly use lawyers.82

Technological change has not been evenly distributed. Technology, machine learning, artificial intelligence, and system process improvements are making some types of legal services more accessible and reducing (sometimes even eliminating) the cost of those services. For example, electronic tools for document review can decrease the cost of

legal services by reducing the time and money spent on the discovery process. Document automation is cutting the cost of legal services by using pre-existing data to assemble a new document. Machine learning has not only revolutionized electronic discovery, legal research, and document generation, but it also is used to support brief and memoranda generation and predict legal outcomes.83 There is a lively debate about cognitive computing and how it might change the delivery of legal services.84

"Lawyers lag behind other professions in transforming the delivery of our services to better meet clients' needs. It's time for aggressive, intentional, and proactive innovation."

Marty Smith
FOUNDER/DIRECTOR,
METAJURE
SEATTLE, WASHINGTON

As documented by the Legal Services Corporation's Report of the Summit on the Use of Technology to Expand Access to Justice and the United Kingdom Civil Justice Council Online Dispute Resolution Report for Low Value Civil Claims, technology also

affords extraordinary opportunities to expand the way legal services are delivered and accessed in addressing access to justice issues.85 The LSC has provided significant impetus for the expanded use of technology in providing legal help to the poor. Many state and local civil legal aid organizations, using special technology grants from LSC (and sometimes on their own initiative and with funds procured from state sources), have developed web-based or mobile applications that provide a vast array of resources, such as legal information and guidance, automated forms, assistance with locating a lawyer to provide limited-scope services, and other innovations. These tools are intended for the poor, but because of the reach of the internet and mobile technology, the tools are generally available to and often used by others as well. The civil legal aid community has been a significant leader in developing technology-based legal tools for the masses, in addition to for-profit technology startups.

The Commission considered the impact of technology across many aspects of the legal profession, including courts, bar associations, law schools, and beyond.

1. Courts, bar associations, law schools, and lawyers are experimenting with innovative methods to assist the public in meeting their needs for legal services.

As noted earlier, there remains considerable resistance to change in many parts of the legal industry. At the same time, however, an increasing number of courts, bar associations, law schools, lawyers, and others are experimenting in important ways.

a. Courts

Courts are innovating in various ways. Examples include the following:

 REMOTE ACCESS TECHNOLOGY: Courts are developing and employing technology to make some services available remotely, such as document filing, docket/record searches, document preparation, and similar services. For example, remote-access courthouse kiosks can be instrumental in providing access to those who face geographic limitations.86 In Arizona, such a kiosk was placed north of the Grand Canyon so that constituents could access the court system instead of driving 7.5 hours to reach the closest courthouse. Similarly, mobile technology can facilitate access for litigants. Judge Ann Aiken, Chief Judge of the Oregon Federal District Court, uses mobile technology with teams of prosecutors, judges, public defenders, and probation officers to provide round-the-clock support to individuals returning to society after incarceration.87

- SELF-HELP CENTERS Self-help centers inside of courthouses also are common, with more than 500 centers across the U.S. These self-help centers provide users with various services, including live assistance, pro bono and other referrals, document support, webbased information, and telephone assistance.⁸⁸
- ONLINE DISPUTE RESOLUTION Online dispute resolution (ODR) is regularly used in the private sector to help businesses and individuals resolve civil matters without the need for court proceedings or court appearances, and there is increasing interest in creating court-annexed ODR systems.89 Some courts are already employing ODR outside the U.S.: Rechtwijzer 2.0, Online Problem-Solving Dispute Resolution for Divorce (Dutch Legal Aid Board, Netherlands) and Civil Resolution Tribunal, Online Solution Explorer for Small Claims and Condominium Disputes (British Columbia Ministry of Justice, Canada). England and Wales recently proposed an online court.90 Some observers predict that "[i]n time, most dispute resolution processes will likely migrate online."91
- JUDICIALLY-AUTHORIZED-AND-REGULATED LEGAL SERVICES PROVIDERS A growing number of U.S. jurisdictions have authorized Legal Services Providers (LSPs) other than lawyers to help address the unmet need for legal

services, 92 and additional jurisdictions are considering doing so.93 As the Washington Supreme Court observed in implementing the Limited Practice Rule for Limited License Legal Technicians (LLLTs), "There are people who need only limited levels of assistance that can be provided by nonlawyers." The Commission studied and considered six examples of already-existing LSPs:

Federally-Authorized LSPs. There is a wide range of legislatively authorized LSPs serving in federal courts and agencies. For example, bankruptcy petition preparers assist debtors in filing necessary legal paperwork in the United States Bankruptcy Court. Bankruptcy petition preparers are only permitted to populate forms; additional services may constitute the unauthorized practice of law. Notably, "research on lay specialists who provide legal representation in bankruptcy and administrative agency hearings finds that they generally perform as well or better than attorneys." 17

Other examples of federal agencies using the services of those who would fall under the umbrella of LSPs include the Department of Justice (DOJ), the Department of Homeland Security (DHS), the Equal Employment Opportunity Commission (EEOC), the Internal Revenue Service (IRS), the Patent and Trademark Office (PTO), and the Social Security Administration (SSA). Both the Board of Immigration Appeals, within DOJ, and U.S. Citizenship and Immigration Services, within DHS, permit accredited representatives who are not licensed lawyers to represent individuals in immigration proceedings.98 Individuals who are not licensed to practice law may represent claimants before the EEOC in mediations, although they are not entitled to fees if an adverse finding is made against the employer.99 Several types of professionals in addition to lawyers are authorized to practice before the IRS

subject to special regulations, including certified public accountants, enrolled agents, enrolled retirement plan agents, low income taxpayer clinic student interns, and unenrolled return preparers. 100 Patent agents are authorized to practice before the PTO on a limited basis for preparing and filing patent applications (and amendments to applications) as well as rendering opinions as to the patentability of inventions. 101 The SSA permits individuals who are not licensed to practice law to represent claimants. Representatives may obtain information from the claimant's file, assist in obtaining medical records to support a claim, accompany a claimant to interviews/ conferences/hearings, request reconsideration of SSA determinations, and assist in the questioning of witnesses at SSA hearings as well as receive copies of SSA determinations. 102

Courthouse Navigators (New York,

Arizona). New York's judicially created limited-scope courthouse navigator pilot program, launched in 2014, prepares "college students, law students and other persons deemed appropriate ... to assist unrepresented litigants, who are appearing" in housing court in nonpayment, civil, and debt proceedings. 103 Courthouse navigators are not permitted to give legal advice and do not give out legal information except with the approval of the Chief Administrative Judge of the Courts. 104 The duties of courthouse navigators include using computers located in the courthouse to retrieve information, researching information about the law, collecting documentation needed for individual cases, and responding to a judge's or court attorney's questions about the case. 105 Courthouse navigators are not permitted to provide legal advice, file any documents with the court with the exception of court-approved "do-ityourself" documents, hold themselves out as representing the litigant, conduct

negotiations with opposing counsel, or address the court on behalf of the litigant, unless to provide factual information at the court's discretion."106 The program is volunteer-based and operates under the supervision of a court navigator program coordinator. The New York Courthouse Navigator Program entails three programs, each with its own structure and supervising entity.¹⁰⁷ The courthouse navigators volunteer through either the New York State Unified Court System's Access to Justice Program, the University Settlement Program, or the Housing Court Answers program, which all have supervisors who are lawyers. 108

The main goals of the program are to help self-represented litigants "have a productive court experience through offering non-legal support" and to give people (often students) practical experience as well as an opportunity to help people in need, make new contacts, and interact with lawyers and judges. 109 In 2014, a total of 301 navigators were trained to provide services through 14 training meetings. 110 The Housing Court Navigators contributed about 3,400 pro bono hours to the program and helped approximately 2,000 unrepresented tenants and landlords, and the Civil Court Navigators assisted over 1,300 litigants.111

The success of the court navigator pilot program led to proposed legislation expanding the role of nonlawyers both in the services provided and the scope

of cases covered. The new legislation would establish two new programs: Housing Court Advocates and Consumer Court Advocates. These programs would be implemented and overseen by the judiciary, providing limited free services to unrepresented individuals living at or below 200 percent of the federal poverty level. 112 Attorneys would be required to supervise specially-trained nonlawyer "advocates" to offer similar services as courthouse navigators as well as "advice, counsel, or other assistance in the preparation of an order to show cause to vacate a default judgment, prevent an eviction, or restore an action or proceeding to the calendar," to "negotiate with a party or his or her counsel or representative the terms of any stipulation order to be entered into," and to "address the Court on behalf of any such person.¹¹³ Another initiative from New York is Legal Hand, a program designed "to reach people at storefront locations in their neighborhoods, staffed with nonlawyer volunteers who provide free legal information, assistance, and referrals to help low-income individuals with issues that affect their lives in areas such as housing, family, immigration, divorce and benefits, and prevent problems from turning into legal actions."114 Supported by a \$1 million grant from an anonymous donor, the "facilities, which are visible from the street and welcoming, are open during regular business hours, with weekend and evening hours as well."115 The first three locations are in

New York Housing Court Navigators



3,400 pro bono hours

contributed



2,000 unrepresented tenants and landlords helped

Crown Heights, Brownsville, and South Jamaica.

Arizona launched a similar court navigator pilot initiative in 2015 to address its family law representation crisis.¹¹⁶ In over eighty percent of family court disputes in Arizona, individuals are faced with the challenge of representing themselves.117 According to Arizona's 2015 Commission on Access to Justice Report, the program will "help guide the self-represented litigant in efficiently completing the family court process."118 The court will train and supervise undergraduates from Arizona State University to serve in this role. 119 Specifically, the program will use court-trained and lawyer-supervised college students in a series of dedicated workshops to provide information and hands-on assistance in completing necessary filings and other paperwork, and to help guide the self-represented litigant in efficiently completing the family court process. 120 The courthouse navigators will not be permitted to provide legal advice at any point during the process. 121 The Arizona court system is in the process of redesigning its existing Self-help Center and is applying for an AmeriCorps grant to create the Court Navigator Program. 122

Courthouse Facilitators (California, Washington State). Courthouse facilitators provide unrepresented individuals with information about court procedures and legal forms in family law cases. 123 In California, the Judicial Council administers the program by "providing funds to these court-based offices, which are staffed by licensed attorneys."124 The California Family Code mandates that a licensed lawyer with expertise in litigation or arbitration in the area of family law work with the family law facilitator to oversee the work of the facilitator and to deal with matters that require a licensed attorney throughout

Courthouse Facilitators Proposition 10 9 out of 10 customers feel more knowledgeable and prepared immediately after a visit with a facilitator 82% have more trust and confidence in the courts

the process. 125 Courthouse facilitators are governed by the California Family Code, which established an office for facilitators in over 58 counties in California. 126 California's Advisory Committee on Providing Access and Fairness has been given the task of implementing a plan to give greater courthouse access to litigants who cannot obtain representation. 127 Courthouse facilitators are one of the options for litigants without such representation.128 While courthouse facilitators are not permitted to provide legal advice, they help to refer unrepresented clients to legal, social services, and alternative dispute resolution resources.¹²⁹ More than 345,000 individuals visit the family law facilitators' offices throughout California each year. 130

Washington State has an analogous program established by the Washington Supreme Court, with oversight from the Family Courthouse Facilitator Advisory Committee. The Committee is charged with establishing minimum qualifications and administering continuing training requirements for courthouse facilitators. During 2007, facilitators statewide conducted approximately

57,000 customer sessions and made 108,000 customer contacts.132 The vast majority of customers using the facilitator program report being very satisfied with the services they receive. Nine out of ten customers agree that they feel more knowledgeable and prepared immediately after a visit with a facilitator, and eighty-two percent say they have more trust and confidence in the courts.133 Facilitator-assisted litigants report more positive court experiences, are more satisfied with court proceedings, outcomes, and choice of representation, and have more trust and confidence in the courts than unassisted self-represented litigants. 134 Moreover, nearly all judicial officers and administrators associated with a facilitator program indicate that the program has a positive impact on self-represented litigants, improves access to justice and the quality of justice, and increases court efficiency. 135 The biggest challenges facing facilitator programs include program funding, managing self-represented litigants' needs for legal advice, and ongoing facilitator training.136

Limited Practice Officers (Washington State). The Washington Supreme Court authorizes certification of limited practice officers to select and complete real estate closing documents. ¹³⁷ The Limited Practice Board was created to oversee the administration of limited practice officers and ensure that officers comply with the Limited Practice Rule, APR 12. ¹³⁸ Limited practice officers are not permitted to provide legal advice or representation. ¹³⁹

Limited License Legal Technicians (Washington State). The Limited License Legal Technician (LLLT) is authorized and regulated by the Washington Supreme Court and is "the first independent paraprofessional in the United States that is licensed to provide some legal advice." 140

To become an LLLT, one must complete an educational program including community college coursework as well as law school level courses specific to the particular practice area education. Prior to licensure, the prospective LLLTs must complete "3,000 hours of work under the supervision of a licensed attorney; they must pass three exams prior to licensure (including a professional responsibility exam); and they must carry malpractice insurance."141 The first LLLTs are licensed in the area of family law.142 LLLTs are subject to rules of professional conduct almost identical to those that apply to lawyers, and a disciplinary system that mirrors that for lawyers applies to them.

Document Preparers (Arizona, California, and Nevada). The California legislature implemented a legal documentation assistant (LDA) program in 2000, providing the public with "an experienced professional who is authorized to prepare legal documents" and to assist "self-help' clients" to "handle their own legal matters without the cost of an attorney."143 Uncontested divorces, bankruptcies, and wills are examples of areas in which California's LDAs are permitted to work.144 These LDAs are not permitted to give legal advice or represent a client in the courtroom.145 They often have knowledge, professional experience, and education similar to that of paralegals.146 The program includes minimum educational and competency requirements.

The Arizona Supreme Court adopted a certification program for legal document preparers in 2003. 147 Arizona mandates that all certified LDAs satisfy minimum education and testing requirements as well as attend a minimum of ten hours of approved continuing education each year. 148 Moreover, the Arizona Code of Judicial Administration regulates LDAs in Arizona, 149 and Arizona provides a list that is available to the public of LDAs

who have violated the Arizona Code of Judicial Administration. ¹⁵⁰ In these instances, the LDAs have had their certificates either revoked or suspended. ¹⁵¹

Since March 2014, Nevada offers a similar legal document preparer program. ¹⁵² Like California, the Nevada program is legislatively authorized, but it does not include a minimum educational or competency component. Nevada requires that all legal document preparers be registered with the Secretary of State. ¹⁵³ Nevada also has a process for consumers to file complaints and provides a list of suspended and revoked licenses. ¹⁵⁴

In addition, a number of U.S. jurisdictions are contemplating the adoption of LSP programs. For example, in February 2015, the Oregon Legal Technicians Task Force recommended to the Oregon State Bar Board of Governors that "it consider the general concept of a limited license for legal technicians as one component of the BOG's overall strategy for increasing access to justice." 155 In 2013, the California State Bar Board Committee on Regulation, Admission, and Discipline Oversight created a working group that recommended that California offer limited licenses to practice law without the supervision of an attorney. Specifically, the Board recommended that the license cover "discrete, technical, limited scope of law activities in non-complicated legal matters in 1) creditor/ debtor law; 2) family law; 3) landlord/tenant law; 4) immigration law."156 The State Bar of California's Civil Justice Strategies Task Force is conducting further study. In 2015, the Utah Supreme Court gave preliminary approval to authorize licensed paralegal practitioners to provide legal services in discrete areas, such as custody, divorce, name change, eviction, and debt collection.157 In reaching this conclusion, the Task Force observed:

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 ... an alternative source for that assistance. 158

Minnesota recently made a similar recommendation, ¹⁵⁹ and other states, including Colorado, ¹⁶⁰ Connecticut, ¹⁶¹ Florida, ¹⁶² Michigan, ¹⁶³ and New Mexico, ¹⁶⁴ are exploring whether to define and expand who can render legal and law-related services.

A useful, albeit not perfect, comparison to those LSP categories cataloged above can be found in the delivery of medical services. Healthcare is now delivered not only by licensed doctors, but also by an increasing array of licensed and regulated providers, such as nurse practitioners, physicians' assistants, and pharmacists. The "medical profession and nurse practitioners [are] a poignant example of less costly service providers who have become a more widely used, professionalized, and respected component of the health care market."165 These providers supplement the work performed by doctors, but do not replace doctors. Similarly, LSPs are not meant to replace lawyers or reduce their employment opportunities, just as nurse practitioners, physician's assistants, pharmacists and phlebotomists are not meant to replace doctors. LSPs are intended to fill gaps where lawyers have demonstrably not satisfied existing needs. A number of scholars166 and regulators¹⁶⁷ predict that LSPs will improve access to legal services by offering assistance to those in need at a lower cost than lawyers.

Additional court-based innovations are described in the Inventory of Innovations found on the Commission's website.

b. Bar Associations

State, local, and specialty bar associations across the country are innovating in various ways. Examples include the following: • ONLINE LEGAL RESOURCE CENTERS AND LAWYER REFERRAL INNOVATIONS Bar associations have continued to operate lawyer referral services that offer a public-service oriented source of guidance to moderate income consumers who do not know how to locate a qualified lawyer. These bar association lawyer referral services are expanding their online offerings. 168 Another online innovation from bar associations is the creation of public directories and marketplaces for the public to find needed legal help. 169 Many bar associations offer modest-means panels, where individuals meeting income requirements are matched with lawyers at fixed or reduced hourly rates for representation in matters that include bankruptcy, family law/ domestic relations issues, landlord-tenant disputes, or simple wills.¹⁷⁰

The ABA and other bar associations have devoted substantial time and energy to evaluating and recommending various tools, especially technology-driven innovations and systems process improvements, to enhance the delivery of legal services. For example, the ABA Blueprint Project "is a coalition dedicated to improving access to legal services through changes in policies, procedures, and systems designs."171 Similarly, the ABA Law Practice Division's Legal Technology Resource Center has long helped lawyers innovate by providing "legal technology guidance to ABA members through various outlets including a technology blog, publications, monthly webinars and its extensive website."172

 ACCESS TO JUSTICE AND FUTURE OF LEGAL SERVICES ENDEAVORS Numerous state and specialty bar associations have engaged in grassroots efforts through task forces and commissions devoted to access to justice and the future of legal services.¹⁷³ Nearly every state has engaged in an access to justice/ legal needs study in the past decade.¹⁷⁴ "Access to Justice Commissions" now exist in thirty-nine states and have been created by the relevant state supreme court or through the efforts of bar leaders or others.¹⁷⁵ These commissions are typically collaborative entities that bring together courts, the bar, civil legal aid providers, and other stakeholders in an effort to remove barriers to civil justice for low-income and disadvantaged people. These efforts have produced many useful reforms, including expanded resources for civil legal aid programs, uniform court forms, improvements in services for self-represented litigants, and other innovations.

Additional bar association innovations are described in the Inventory of Innovations found on the Commission's website.

c. Law Schools: Curriculum and Incubators

Many law schools are now educating law students about innovation in legal services delivery. For example, a number of law schools now offer courses on e-discovery, outcome prediction, legal project management, process improvement, virtual

lawyering, and document automation.177 This effort is consistent with the recommendation from the ABA Task Force on Legal Education that law schools should offer more technology training, experiential learning, and the development of practice-related competencies. 178 Other legal education innovations include incubators to provide recent law students and graduates with an opportunity to provide legal services to low and moderate-income clients. 179 Some incubators focus mainly on delivery of legal services to those in need while others require their recent law

"Our law schools must provide students with tools to innovate boldly and therefore to reimagine the structures and possibilities of legal services in the new millennium."

Daniel B. Rodriguez

HAROLD WASHINGTON PROFESSOR AND DEAN

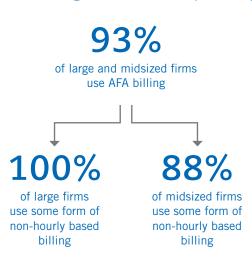
NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW CHICAGO, IL graduates to engage in rigorous innovation. More than thirty-five schools now offer this sort of post-graduate incubator experience, ¹⁸⁰ and most law schools offer clinical opportunities for students to gain practical, hands-on training.

Additional law school innovations are described in the Inventory of Innovations found on the Commission's website.¹⁸¹

d. Lawyers, Law Firms, and General Counsel

Many other innovations, both technology-driven and process-driven, have transformed the delivery of legal services over the past fifteen years, and new possibilities emerge on a near-daily basis. Some innovations affect only certain segments of the market; for example, legal process outsourcing and electronic discovery typically affect corporate and organizational clients. Others have changed how lawyers calendar and docket, manage and store case files, conduct legal research and discovery, communicate with clients and opposing counsel, and bill their time. 182 Some innovations shape all levels of the legal services marketplace, such as expert system tools, which help consumers of legal services work through complicated legal issues using branching questions and answers, and mobile applications, which enhance

Alternative Fee Arrangements (AFA)



accessibility for individual consumers with personal legal needs (for example, the creation of a power of attorney). Creative partnerships between services providers also fuel innovations. A number of examples are highlighted here, and additional examples are described in the Inventory of Innovations found on the Commission's website.

 ALTERNATIVE BILLING Business and organizational clients increasingly demand that their law firms look at alternatives to hourly billing as a way of reflecting the value of legal services.183 Since the 1960s, the predominant way that law firms have charged for their work has been through the use of billable hours. In recent years, however, consumers have become aware of and started to more regularly demand an alternative fee arrangement (AFA). These AFAs include fixed pricing for discreet services, flat fees, contingency fees, other fee arrangements tied to matterrelated outcomes, and hybrids of AFA and traditional hourly billing. As another example of innovation in billing practices, some firms use enticements, for example consultations for \$1 and \$2 per minute.184 In a recent Altman Weil survey of large and midsize law firms, ninety-three percent of firms reported that they use AFA billing.185 Of these firms, one hundred percent of large firms, measured by 500 or more lawyers, reported that they use some form of non-hourly based billing while eighty-eight percent of firms with 50-99 lawyers use non-hourly billing. 186 Nearly a third of firms reported that their usage of non-hourly based billing was based on proactive behavior, while sixty-eight percent used AFAs in response to client requests. 187

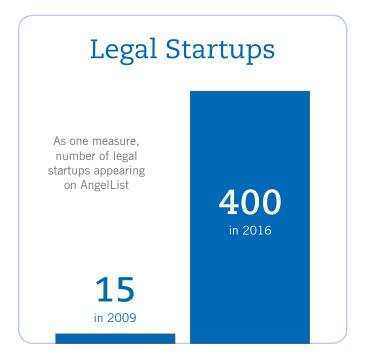
The traditional billable hour can create significant buyer apprehension about the ultimate total cost that may be imposed for personal legal services, an amount often unknowable at the outset. Reducing uncertainty in price, essential to overcoming buyer reluctance, is a key feature of alternative billing practices. One example of an effort to do so is SmartLaw Flat Fee Legal Service, introduced by the Los Angeles County Bar Association in

- 2016. SmartLaw "connect[s] consumers with qualified attorneys who can help them handle uncontested divorces, small business formation and trademark registration." Fees are set at \$800 for an uncontested divorce or LLC business formation, and \$500 for trademark registration. 189
- DOCUMENT ASSEMBLY AND AUTOMATION Document assembly tools automate the creation of oft-used legal documents, such as wills, leases, contracts, and client engagement letters. 190 These tools decrease the amount of lawyer-time involved in preparing documents, thus increasing the efficiency of a lawyer's practice, 191 or in some cases, allowing individuals to create legal documents without the assistance of a lawyer. A 2009 survey by the ABA on legal technology adoption indicated that thirty-four percent of respondents used document assembly software, an increase from thirty percent in the previous year. 192 Many legal aid offices also use document assembly software to serve clients. For example, A2J Author, a joint project between Chicago-Kent College of Law and the Center for Computer-Assisted Legal Instruction, has been used to reach nearly two million legal aid clients across the country to conduct automated interviews and generate legal documents.193
- LEGAL PROCESS OUTSOURCING Legal process outsourcers (LPOs) are reducing the cost of legal services, especially for business and organizational clients, while putting pressure on the traditional law firm business model. Legal process outsourcing involves the performance of discrete legal projects or tasks by typically less expensive third party vendors. 194 The LPO industry is currently valued at one billion dollars in revenue per year. 195 LPOs often are based in countries overseas or in smaller, less expensive U.S. markets. LPOs initially offered transcription, word processing, and other routine tasks, including paralegal services. Over time, LPOs have expanded to offer more substantive tasks, such as patent applications, e-discovery, contract management, compliance, and legal research

- for a fraction of the price typically charged by law firms. ¹⁹⁶ One benefit for law firms is that their lawyers spend more time on higher value-added activities rather than on routine tasks (that is, they are more likely to be practicing "at the top of their licenses").
- LEGAL STARTUPS The concept of "legal startup" has been defined as "a newly formed organization providing innovative products or services to improve legal service delivery."197 The legal-tech startup industry, essentially nonexistent a decade ago, is developing, although little data exists to accurately assess the impact of legal startups. As one rough measure, in 2009, fifteen legal startups appeared on AngelList, a website for startups and their angel investors.198 In 2016, over 400 legal startups (and perhaps as many as 1,000) were in existence. 199 Financial investment into legal startups, perhaps, is another measure—in 2013, it was reported that \$458 million had been invested in legal startups.200 Legal startups have tapped into a number of market segments:
 - 1. Business to consumer, including small businesses—for example, finding lawyers, lawyer ratings, and lawyer matching; do-it-yourself legal tools; law for small transactions, such as a simple contract; form documents; document automation/assembly; dispute avoidance/management; collaborative law; and litigation finance.
 - 2. Business to business—this includes many of the items listed under business to consumer as well as legal supply chain management; billing data analytics; legal temp services and contract lawyers; legal process outsourcing; compliance; contract management; risk management; and online dispute resolution.
 - 3. Business to lawyer/law firm/legal departments—this includes many of the items listed in the above categories as well as lawyer marketing, legal research, crowdsourcing, analytics, legal education and

training, law practice management, client intake/conflicts, time/billing, virtual legal team tools, lawyer recruiting, project management, knowledge management, e-discovery tools, vendor market-places, and trial/transactional tools.²⁰¹

 MEDICAL-LEGAL PARTNERSHIPS Medicallegal partnerships (MLPs) involve "hospitals and health centers that partner with civil legal aid resources in their community to: (1) train staff at the hospitals and health centers about how to identify health-harming legal needs; (2) treat health-harming legal needs through a variety of legal interventions; (3) transform clinic practice to treat both medical and social issues that affect a person's health and well-being; and (4) improve population health by using combined health and legal tools to address wide-spread social problems, such as housing conditions, that negatively affect a population's health and well-being."202 MLPs currently operate at 276 hospitals and health centers in 38 states, "providing direct legal services to patients; training and education to healthcare providers; and a platform for systemic advocacy."203 Examples of partners collaborating to offer MLPs include bar associations, civil legal aid agencies, law schools, pro bono law agencies,



hospitals, health centers, medical schools, and residency programs.²⁰⁴

- ARTIFICIAL INTELLIGENCE Artificial intelligence is impacting the way legal services are delivered and will continue to do so as technology advances. Ross Intelligence is an example of how artificial intelligence can be used to improve the delivery of legal services. Ross is powered by IBM Watson, which is a machine learning system that famously beat a Jeopardy game show champion, and helps lawyers conduct research.²⁰⁵ According to its creators, "Ross Intelligence is an AI legal researcher that allows lawyers to do legal research more efficiently, in a fraction of the time. It does that by harnessing the power of natural language processing and machine learning to understand what lawyers are looking for when conducting their research, then get smarter each time to bring back better results. It grows alongside our lawyers."206
- MOBILE APPLICATIONS Mobile applications ("apps") are making legal services more accessible and affordable, both for lawyers engaged in the practice of law and for the public in need of legal help. Apps already in the marketplace help lawyers find substitute counsel,²⁰⁷ conduct legal research,²⁰⁸ and much more.²⁰⁹

With regard to personal legal services, mobile technology tools "for immigrants, the indigent, those who face arrest and the lawyers who help them have been popping up with increasing frequency."210 As one scholar observed: "Apps in this area not only give everyday people resources to solve their legal problems—they educate people about the law and empower them. In the end, we may end up with a more educated citizenry that can engage meaningfully in the political process."211 Individuals who desire more efficient and affordable legal assistance also use mobile apps. For example, one app allows users to create, sign, and send legally binding contracts from a smartphone, for free.212 The legal app marketplace, however, can be fragile. For example, one popular app

for addressing parking tickets received venture capital funding and accolades yet also has been blocked by some municipalities. ²¹³ Consumers can benefit from the convenience and affordability of these services, but also should be aware that the legal help received via a mobile app is not necessarily an effective substitute in many circumstances for legal help from an attorney.

- NONPROFITS Nonprofit organizations are another source of innovation, and they are often focused on delivering legal services to moderate-income households. For example, "the DC Affordable Law Firm was created in 2015 as a 501(c)(3) tax-exempt charitable entity by Georgetown University Law Center and two major law firms, DLA Piper and Arent Fox, with a mission to serve Washington DC residents who do not qualify for free legal aid and cannot afford standard hourly rates charged by lawyers."214 Similarly, Open Legal Services is a "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."215 Open Legal Services offers legal representation in family law and criminal law matters. The Chicago Bar Foundation uses an incubator model in its Justice Entrepreneurs Project, which helps "newer lawyers to start innovative, socially conscious law practices in the Chicago area that provide affordable services to low and moderate-income people."216
- PROCUREMENT EFFICIENCIES TO LOWER COSTS Companies with significant legal spending increasingly use procurement professionals to manage legal costs.²¹⁷ Although precise data is not available, industry observers estimate that "two-thirds of the Fortune 500, as well as an increasing number of multinational companies, have dedicated legal procurement professionals."²¹⁸ Procurement professionals are "stepping into a role that many lawyers aren't trained in—namely, making well-informed purchasing decisions and negotiating with and managing the work performed by outside service providers," such

- as LPOs.²¹⁹ As a result, these procurement professionals are creating pressures for additional innovation in the delivery of corporate legal services. In-house lawyers also are becoming more adept at procurement, negotiating, and supply chain management skills so that they can best manage the procurement of legal services for their clients.
- PROJECT MANAGEMENT AND PROCESS IMPROVEMENT Project management and process improvement are used by law firms as tools for improving efficiency in the delivery of legal services. One notable example is SeyfarthLean, developed by the law firm Seyfarth Shaw by combining Lean Six Sigma process improvement with project management and technology solutions.220 Lean Six Sigma is a process methodology designed to improve productivity and profitability by reducing waste.221 Legal project management involves more thoroughly defining the engagement at the outset, planning it, evaluating it, and closing it at the end, and can be applied across the board to all types of firms and legal matters.222 It is estimated that "[i]n many large law firms today, writeoffs that are attributable to a lack of project management are typically costing in excess of 10 million dollars per year."223 Legal project management and process improvement eliminates these write-offs and also can lead to other efficiencies.
- PREPAID LEGAL SERVICES PLANS AND INSURANCE COVERAGE Group and prepaid legal services plans provide an efficient mechanism for matching clients in need of services with lawyers. 224 Group legal plans create panels of lawyers with expertise in various areas and match them with plan member clients. 225 Clients find a lawyer with the appropriate skills on the panel and, within the limits of the plan, receive the legal services they need. 226 Lawyers often can establish a relationship with a client, and that same client may return to the lawyer to obtain different services that are at the lawyer's normal rate and that are not covered under the group or

prepaid plan.²²⁷ Many lawyers are turning to prepaid legal services plans to supplement their work, if not their entire practices.²²⁸ Clients pay a pre-established amount of money and in return are provided with needed legal services at no additional cost.²²⁹ Examples of prepaid legal services include, but are not limited to, review of simple legal documents, preparation of a simple will, and short letters or phone calls made by a lawyer to an adverse party.²³⁰ Legal insurance similarly can provide more affordable legal services while also helping individuals recognize when their problems have legal solutions.²³¹

 UNBUNDLING OF LEGAL SERVICES Many practitioners have used unbundling of legal services to reduce the cost of legal services. "Unbundling" refers to the practice of breaking legal representation into separate and distinct tasks,232 with "an agreement between the client and the lawyer to limit the scope of services that the lawyer renders."233 A range of activities can be offered as unbundled services: advice, research, document drafting, negotiation, or court appearances. Unbundling can benefit clients, courts, and lawyers.234 Clients are served by unbundling because they can pay for specific, discrete legal services and avoid expenses from unnecessary or unwanted legal work.235 Lawyers may benefit from an increased number of clients because some consumers are willing or able to purchase a lawyer's services only if those services are offered in an unbundled fashion.236 Courts may also benefit from the unbundling of legal services because fewer litigants appear in court without having sought at least some assistance from a lawyer.237 Not every legal problem is appropriate for unbundling, but limited-scope representation can be beneficial in many cases.238

2. New providers of legal services are proliferating and creating additional choices for consumers and lawyers.

Consumers of legal services—both the public and lawyers themselves—are encountering new

types of providers. These providers offer a range of services, including "automated legal document assembly for consumers, law firms, and corporate counsel; expert systems that address legal issues through a series of branching questions and answers; electronic discovery; legal process outsourcing; legal process insourcing and design; legal project management and process improvement; knowledge management; online dispute resolution; data analytics; and many others."239

"Technology is transforming the legal profession and our world. The only constant is change, moving ever faster. We owe it to ourselves to continually innovate."

Ruth Hill Bro
PRIVACY ATTORNEY
PAST CHAIR
ABA SECTION OF SCIENCE
& TECHNOLOGY LAW
CHICAGO, IL

U.S. Census data evaluated in one recent study indicated that, since 1998, law office employment has actually shrunk while "all other legal services" have grown eight and a half percent annually and 140 percent over the whole period.²⁴⁰ Another report from 2014 discussed the explosion of the "Online Legal Services Industry," which the report defined as virtual law firms and legal service companies that deliver bundled and unbundled documents and services.241 Significantly, this industry did not exist a decade ago, but as of 2014, it was valued by one source at approximately \$4.1 billion.242 This segment has grown at an annualized rate of nearly eleven percent over the previous five years and is projected to grow nearly eight percent to \$5.9 billion by 2019.243

Other sources also reveal the rapid growth in the number of nontraditional legal services providers. In 2012, legal service technology companies received \$66 million in outside investments, but by 2013, that figure was \$458 million.²⁴⁴ The explosion in the number of these entities appears to be a response to marketplace demands for new approaches to solving legal problems. Indeed,

Diversity in 2015



many consumers are choosing these nontraditional legal services providers over traditional law firms²⁴⁵ or are using these legal services providers to access law firm services.

A 2015 study identified several new categories of legal services delivery providers: (1) secondment firms, where lawyers work on a temporary or part-time basis in a client organization; (2) companies combining legal advice with general business advice that is typical of management consulting firms; (3) "accordion companies," providing networks of trained, experienced lawyers to fill short-term law firm staffing needs; (4) virtual law practices and companies where attorneys primarily work from home to save on overhead

expenses; and (5) law firms and companies offering tailored, specialty services with unique fee arrangements or delivery models.²⁴⁶ According to the study, forty-four of these non-traditional providers operate in the U.S. or Canada, ranging in size and length of existence. One company, operating for more than a decade, has fourteen offices globally and over 1,200 employees.²⁴⁷

Individual consumers' demands also are evolving. The public wants easy access to do-it-yourself tools, including tools that provide access to statutes and cases relevant to their legal problems. The public also wants simple services that are understandable and deliverable via mobile devices on demand.

C. Public trust and confidence in obtaining justice and in accessing legal services is compromised by bias, discrimination, complexity, and lack of resources.

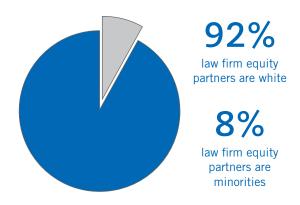
1. The legal profession does not yet reflect the diversity of the public, especially in positions of leadership and power.

Goal III of the ABA's mission includes promotion of full and equal participation in the ABA, the legal profession, and the justice system by all persons as well as the elimination of bias in the legal profession and the justice system.²⁴⁸ Several ABA entities are engaged in important efforts to advance this goal, including the Commission on Disability Rights, the Center for Racial and Ethnic Diversity, the Commission on Women in the Profession, the

Commission on Sexual Orientation and Gender Identity, and the Task Force on Gender Equity.

The United States is demographically diverse and becoming more so. The U.S. Census Bureau predicts that by 2020, "more than half of the nation's children are expected to be part of a minority race or ethnic group." While the legal profession has become more diverse, it does not reflect the diversity of the American public as a whole. This is especially true in positions of leadership and power in the profession. 250

Demographics in 2015



Lawyer demographics are instructive. The number of licensed lawyers in 2015 was 1,300,705,²⁵¹ sixty-five percent male and thirty-five percent female;²⁵² eighty-eight percent white and twelve percent minorities.²⁵³ By comparison, the total population of the United States as of 2015 was 321,418,820,²⁵⁴ seventy-seven percent white and twenty-three percent minorities.²⁵⁵ The percentage of minorities in the total population is nearly double the percentage of licensed lawyers. Similarly, while approximately thirteen percent of the public includes persons with disabilities, they represent less than one half of one percent of attorneys working in law firms.²⁵⁶

Law students are more demographically representative of the U.S. population. Women make up almost forty-eight percent of all law students,257 with minorities totaling twenty-eight percent.258 That said, studies show that women and minorities are more likely to leave the practice of law over time.259 As a result, fewer women and minorities are in positions of power within the legal profession. Consider that in 2015, ninety-two percent of law firm equity partners were white, with only nineteen percent of those partners being women.²⁶⁰ Overall, only slightly more than seven percent of equity partners are minorities, and two and a half percent are minority women.261 Women represent twenty-one percent of female general counsel in the Fortune 500,262 thirty percent of law school deans,263 and thirty-four percent of tenured law school professors.264

Women comprise thirty-five percent of the judges serving on a federal court of appeals, and thirty-three percent of federal district court judges, although there remain six federal district courts where there has never been a female judge; only seven percent of federal appeals court judges are minority women, and there are currently seven federal courts of appeals with no active minority woman judge.265 As for women and minorities serving as judges for state courts, twenty-six percent of state court judges are women while just over eleven percent of state court judges are minorities.²⁶⁶ The salaries of women in the legal profession lag significantly behind men. A 2014 study revealed that women lawyers and judges earn about eighty-two percent of the salaries of men in the same positions.267

2. Bias—both conscious and unconscious—impedes fairness and justice in the legal system.

"For the legal profession, understanding implicit bias and ways to de-bias one's approach to law-related issues and decisions is critical to a fair and representative perception and reality of access to justice and equity." It is difficult to define the problem of implicit bias with precision, but as one scholar explained:

We naturally assign people into various social categories divided by salient and chronically accessible traits, such as age, gender, race, and role. And just as we might have implicit cognitions that help us walk and drive, we have implicit social cognitions that guide our thinking about social categories. Where do these schemas come from? They come from our experiences with other people, some of them direct (i.e., real-world encounters) but most of them vicarious (i.e., relayed to us through stories, books, movies, media, and culture).

If we unpack these schemas further, we see that some of the underlying cognitions include stereotypes, which are simply traits that we associate with a category. For instance, if we think that a particular category of human beings is frail—such as the elderly—we will not raise our guard. If we think that another category is foreign—such as Asians—we will be surprised by their fluent English. These cognitions also include attitudes, which are overall, evaluative feelings that are positive or negative. For instance, if we identify someone as having graduated from our beloved alma mater, we will feel more at ease. The term "implicit bias" includes both implicit stereotypes and implicit attitudes.

Though our shorthand schemas of people may be helpful in some situations, they also can lead to discriminatory behaviors if we are not careful. Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors, and staff should be particularly concerned about identifying such possibilities.²⁶⁹

Implicit or unconscious bias contributes to injustice, and this injustice in turn causes the public to mistrust the legal system. ²⁷⁰ The National Center for State Courts indicated that implicit bias may be a source for the "widespread" and enduring "public skepticism that racial and ethnic minorities receive consistently fair and equal treatment in American courts" even in the face of "substantial work by state courts to address issues of racial and ethnic fairness."²⁷¹

Over the years, the ABA has implemented tools, such as the Building Community Trust course, to educate its members and external audiences on cultural competency and implicit bias.²⁷² To further address these issues, 2015-16 ABA President Paulette Brown created the ABA Diversity and Inclusion 360 Commission to formulate methods, policy, standards and practices to advance diversity and inclusion over the next decade.²⁷³ At the recommendation of the 360 Commission, the ABA House of Delegates adopted Resolution 107 in 2016 to encourage courts and bar associations with mandatory or minimum continuing legal education (MCLE) requirements to modify their rules to:

1. include as a separate credit programs regarding diversity and inclusion in the legal profession of all persons regardless of race,

- ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias; and
- require a designated minimum number of hours for this separate credit without increasing the total number of required MCLE hours and without changing the criteria for MCLE credit.

The Resolution further encourages the ABA through its Goal III and other entities to assist in the development and creation of continuing legal education programs addressing diversity and inclusion. The work of the ABA Diversity and Inclusion 360 Commission is a critical component of reestablishing the public's trust.

3. The complexity of the justice system and the public's lack of understanding about how it functions undermines the public's trust and confidence.

Many Americans lack basic knowledge about the justice system. A common complaint among unrepresented litigants "when navigating the court system is difficulty reading and understanding the forms due to confusing and complex language." Other challenges include "the complexity of the legal system, lack of knowledge, language and comprehension difficulties, lack of uniformity from court to court, and the sheer intimidation of the process." 275

Judge Fern A. Fischer, Deputy Chief Administrative Judge, NYC Courts and Director of the NYS Courts Access to Justice Program, testified in 2011 about the complexities facing individuals in the justice system:

Most individuals would not attempt to play a sport, play a game, take an exam, or fill out an important application without knowing the rules and instructions. Indeed, we give people clear rules or instructions on how to complete these tasks. But, we often do not always provide unrepresented litigants the rules, instructions and necessary tools when they are attempting to navigate the courts. In our adversarial sys-

tem, the information, rules and forms unrepresented litigants need to be successful on their case are often not available or accessible. We often hide the ball necessary to play the game. It is time to stop hiding the ball, so the game is fair. ...

In order to achieve a major step forward in access to justice, standardization and simplification of forms and procedures is an effort we must embrace and get done. ... Recently, when preparing a DIY program for minor name changes my staff learned that depending on the county a family resided in, the family may be charged one fee for changing the names of all the children in the family or in other counties a fee will be charged for each child. In some counties the fee depended on who was at the counter at the time. In some counties three copies of the forms were required. In other counties less than three copies are required. Some counties required a petition others did not. ...

Justice should not be more expensive or complicated depending on which county you reside. Moreover, justice should not be stymied by obstacles we can remove.²⁷⁶

The complexity of the justice system, coupled with a lack of knowledge about how to navigate it, undermines the public's trust and confidence.277 The Commission found evidence in many areas of "the need for procedural and systemic reform, such as the adoption of plain language forms for court actions and the simplification of procedures in high-need areas such as family law, immigration, and consumer debt."278 Research also suggests "the need to improve courts' treatment of pro se litigants and adherence to statutory burdens of proof even in the absence of lawyers."279 A 2015 meta-analysis of extant research on lawyers' impact on case outcomes found that lawyers make the biggest difference in high-volume settings in which cases are typically "treated perfunctorily or in an ad hoc fashion by judges, hearing officers and clerks." 280 In such contexts, "the presence of lawyers may improve case outcomes simply by encouraging court personnel to follow the rules."281

When litigants, represented or not, are forced to endure long delays in court proceedings due to clogged dockets and inefficiencies driven by jurisdiction or even courtroom specific processes, a lack of uniform and reliable forms, or lack of court personnel and resources, their employers, also suffer, particularly small businesses. Harms include absent days from work, tardiness, and employees' preoccupation with complex court procedures, rules, and processes.

4. The criminal justice system is overwhelmed by mass incarceration and over-criminalization coupled with inadequate resources.

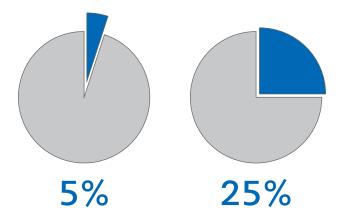
In 1963, the U.S. Supreme Court established in Gideon v. Wainwright that all states, counties, and local jurisdictions must provide representation for criminal defendants unable to afford a private attorney.282 Nevertheless, as recognized by the U.S. Department of Justice, even with "the significant progress that has been made over 50 years after the decision, the promise of Gideon remains unfulfilled."283 There are many contributing factors. Federal and state studies evidence inadequate funding and other resources available to lawyers and others responsible for defending the accused.284 For example, Louisiana has the highest number of incarcerated citizens, yet their public defender system is extremely underfunded and in a state of crisis: "Without sufficient resources necessary to provide the constitutionally guaranteed right to counsel for the more than 240,000 cases represented by public defenders each year, many districts will be required to begin restriction of services and potentially grinding the entire criminal justice system to a halt."285 Due to the lack of funding, district offices must stop accepting new cases to prevent attorney caseloads from rising to the threat of ineffective assistance of counsel.²⁸⁶ When public defender services are restricted, cases are waitlisted, threatening public safety, jeopardizing justice for crime victims, and delaying court dockets.²⁸⁷ Consider the burden in Louisiana alone for the year of 2013: 247,828 total cases, comprised of 93,384 adult felonies and 109,175 adult misdemeanors.288 Of those 247,828

cases, over eighty-five percent of defendants charged with a criminal offense in Louisiana were represented by the public defender system.²⁸⁹

Providing competent counsel is the best means of ensuring the proper operation of the constitutional safeguards designed to protect the innocent from unfair punishment, including death.²⁹⁰ For most poor criminal defendants, "who are disproportionately members of communities of color," the only access to legal representation is through the public defender system and, where "public defender services are inadequate, the accused poor will likely be deprived of constitutional procedural protections."²⁹¹

The United States leads the world in incarceration rates, with more than two million people in jail or prison.²⁹² Although the current system of imprisonment is based on crime prevention, control, and punishment, this results in an overbalance toward punishment.²⁹³ As a consequence, the U.S. "imprison[s] offenders, particularly nonviolent offenders, in number and length that are out of proportion to the rest of the world, largely as a result of the broad use of mandatory minimum sentences."²⁹⁴ Lengthy sentences and over-incarceration are burdening an already inadequately funded criminal justice system. Recommendations have been

The U.S. Criminal Justice System



The U.S. has 5% of the world's population and 25% of the world's jail and prison population

made to shift funding "from support for unnecessary, and unnecessarily lengthy, incarceration to proactive and preventative strategies for gang and drug offenses and for alternatives to incarcerations for reentry."295 "Justice systems - traditionally funded primarily from a jurisdiction's general tax revenues - have come to rely increasingly on funds generated from the collection of fines and fees," to sustain their budgets and, in some instances, have become "revenue centers that pay for even a jurisdiction's non-justice-related government operations."296 As one example, the U.S. Department of Justice recently cited "the practices of the Ferguson, Missouri police department and municipal courts" in its investigation into police abuse.297 The example of "Ferguson is not unique; similar problems exist throughout the country."298 There is often too little accountability and insufficient effort to assure that justice prevails in jails and prisons and too little effort made to coordinate re-entry and prison resources to better assist individuals in successful re-entry efforts. The pervasive lack of legal assistance with municipal and traffic violations has led to the abusive use of arrest warrants and fines in poor communities.299

The excesses in the criminal justice system have (1) had a disproportionate effect on minority communities; (2) imposed multiple collateral consequences on those convicted of offenses, making it difficult for them to return to their communities and find jobs and housing and to obtain education and training; and (3) made the rule of law and the promise of equal justice meaningless concepts in some communities. In July 2015, then-ABA President William C. Hubbard and NAACP Legal Defense and Educational Fund President and Director-Counsel Sherrilyn Ifill issued a joint statement in which they pointed out the following:

Given the history of implicit and explicit racial bias and discrimination in this country, there has long been a strained relationship between the African-American community and law enforcement. But with video cameras and extensive news coverage bringing images and stories of violent encounters between (mostly white) law enforcement officers and (almost exclusively African-American and Latino) unarmed

individuals into American homes, it is not surprising that the absence of criminal charges in many of these cases has caused so many people to doubt the ability of the criminal justice system to treat individuals fairly, impartially and without regard to their race.

That impression is reinforced by the statistics on race in the criminal justice system. With approximately 5 percent of the world's population, the United States has approximately 25 percent of the world's jail and prison population. Some two-thirds of those incarcerated are persons of color. While crime rates may vary by neighborhood and class, it is difficult to believe that racial disparities in arrest, prosecution, conviction and incarceration rates are unaffected by attitudes and biases regarding race.

And, to the extent that doubts remain, the U.S. Department of Justice's recent investigation of law enforcement practices in Ferguson, Missouri, should put them to rest. In Ferguson, the Justice Department found that the dramatically different rates at which African-American and white individuals in Ferguson were stopped, searched, cited, arrested and subjected to the use of force could not be explained by chance or differences in the rates at which African-American and white individuals violated the law. These disparities can be explained at least in part by taking into account racial bias.³⁰⁰

5. Federal and state governments have not funded or supported the court system adequately, putting the rule of law at risk.

According to the World Justice Project Rule of Law Index, the United States legal system ranks in the bottom half (13 out of 24) of North American and Western European countries.³⁰¹ The U.S. ranks highly on most aspects of the rule of law, except for one: access and affordability.³⁰² The Commission believes it is critical to the rule of law that the courts be accessible, understandable, and welcoming to all litigants. The profession must look for "user-driven solutions"³⁰³—that is, responses with a focus upon the experience of the consumers of the legal system.

The nation's civil courts, surviving in a co-equal branch of government, are at a crossroads, threatened by legislative budget cuts, diminution of services, and a growing sense that most Americans are not served by the justice system.³⁰⁴ The budget cuts dramatically affect the justice system and result in reduced availability or elimination of court self-help services as well as other cost-saving measures, while compromising the ability of the courts to adequately serve the public.³⁰⁵

Part I of this Report provided a high-level overview of the Commission's Findings. For more detail on the vast array of information reviewed, considered, debated, and discussed by the Commission, please visit the publicly available Commission website at ambar.org/abafutures to find all written testimony and comments; video clips of hearing testimony, webinars, and the 2015 National Summit on Innovation in Legal Services; links to grassroots meetings and materials; an Inventory of Innovations collected from across the country and around the world; and other resources.

Part II provides the Commission's Recommendations to enhance the public's access to and the delivery of legal services in the 21st century.

PART II. THE DELIVERY OF LEGAL SERVICES IN THE UNITED STATES: THE COMMISSION'S RECOMMENDATIONS

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

Linda A. Klein
ABA PRESIDENT-ELECT 2015-16

s demonstrated in Part I, the American public faces significant, unmet legal needs. Although various efforts have improved the delivery of legal services and made those services more accessible for some, much

work remains to be done. The Commission offers the following recommendations in order to build on past efforts and ensure that everyone has meaningful assistance for essential legal needs.

Recommendation 1.

The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer.

The goal of justice for all remains elusive. The Commission recommends that the ABA, other bar associations, and individual members of the legal profession assist and implement the 2015 resolution by the Conference of Chief Justices and

Conference of State Court Administrators to "support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access

to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes."306

In order to reach that goal, the Commission recommends that jurisdictions aspire to the following principles in an effort to address the crisis in access to justice for underserved populations.

Principles for Access to Legal Services for the Underserved³⁰⁷

- Legal representation should be provided as a matter of right at public expense to low-income persons in adversarial proceedings in those categories of proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody.
- Coordination and collaboration among service providers, the courts, the bar, client communities, government agencies and other stakeholders should occur systematically to support and facilitate access to justice for all.
- Legal representation should be competently and effectively provided, offered independently of the appointing authority, and free from conflicts of interest.
- Adequate compensation and funding should be provided to those who deliver legal services to ensure effective and competent representation.
- Court proceedings should be accessible, understandable, and welcoming to unrepresented litigants.
- Courts should adopt standardized, uniform, plain-language forms for all proceedings in which a significant number of litigants are unrepresented.

- Courts should ensure that all litigants have some form of effective assistance in addressing significant legal needs. A full range of services should be provided in all forums, and should be uniformly available throughout each state.
- Courts should examine and, if they deem appropriate and beneficial to providing greater access to competent legal services, adopt rules and procedures for judicially-authorized-and-regulated legal services providers.
- Courts should adopt technologies that promote access for unrepresented litigants.

Furthermore, the recommendations contained in the Legal Services Corporation's Report of the Summit on the Use of Technology to Expand Access to Justice³⁰⁸ provide important mechanisms for using technology to support the goal of justice for all. In particular, the Commission recommends implementation of the following strategies identified in the LSC Report:

- Creating in each state a unified "legal portal" that, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process.
- Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation.
- Taking advantage of mobile technologies to reach more persons more effectively.
- Applying business process/analysis to all access to justice activities to make them as efficient as possible.
- Developing "expert systems" to assist lawyers and other services providers.

The LSC Report observed: "Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance." ³⁰⁹ At a minimum, the public should have access to a "website accessible through computers, tablets, or smartphones that provides sophisticated but easily understandable

information on legal rights and responsibilities, legal remedies, and forms and procedures for pursuing those remedies."³¹⁰The ABA should collaborate with the LSC and other interested entities to pursue the implementation of the recommendations set out in the LSC's Report of the Summit on the Use of Technology to Expand Access to Justice.

Recommendation 2.

Courts should consider regulatory innovations in the area of legal services delivery.

2.1. Courts should consider adopting the ABA Model Regulatory Objectives for the Provision of Legal Services.

Various regulatory innovations have been adopted in the U.S. and around the world with the stated objective of improving the delivery of legal services. The Commission believes that, as U.S. courts consider these innovations, they should look to the ABA Model Regulatory Objectives for the Provision of Legal Services for guidance. Regulatory objectives are common in other countries and offer principled guidance when regulators consider whether reforms are desirable and, if so, what form such changes might take. In February 2016, the ABA House of Delegates officially adopted the Commission's proposed Model Regulatory Objectives.311 In doing so, the House of Delegates recognized "that nothing contained in this Resolution abrogates in any manner existing ABA policy prohibiting non lawyer ownership of law firms or the core values adopted by the House of Delegates."

ABA Model Regulatory Objectives for the Provision of Legal Services

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law

- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. 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
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs
- J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

The ABA Model Regulatory Objectives offer courts much-needed guidance as they consider how to regulate the practice of law in the 21st century.

Regulatory objectives are a useful initial step to guide supreme courts and bar authorities when they assess their existing regulatory framework and any other regulations they may choose to develop concerning legal services providers. The Commission believes that the articulation of regulatory objectives serves many valuable purposes. One article cites five such benefits:

First, the inclusion of regulatory objectives definitively sets out the purpose of lawyer regulation and its parameters. Regulatory objectives thus serve as a guide to assist those regulating the legal profession and those being regulated. Second, regulatory objectives identify, for those affected by the particular regulation, the purpose of that regulation and why it is enforced. Third, regulatory objectives assist in ensuring that the function and purpose of the particular [regulation] is transparent. Thus, when the regulatory body administering the [regulation] is questioned—for example, about its interpretation of the [regulation]—the regulatory body can point to the regulatory objectives to demonstrate compliance with function and purpose. Fourth, regulatory objectives can help define the parameters of the [regulation] and of public debate about proposed [regulation]. Finally, regulatory objectives may help the legal profession when it is called upon to negotiate with governmental and nongovernmental entities about regulations affecting legal practice.312

Regulatory objectives differ from the legal profession's core values in at least two respects. First, the core values of the legal profession are (as the name suggests) directed at the "legal profession."313 By contrast, regulatory objectives are intended to cover the creation and interpretation of a wider array of legal services regulations, such as regulations covering new categories of legal services providers. For this reason, some duties that already exist in the Model Rules of Professional Conduct (e.g., the duty of confidentiality) are restated in the ABA Model Regulatory Objectives for the Provision of Legal Services to emphasize their importance and relevance when developing regulations for legal services providers who are not lawyers. Second, while the core values of the legal profession remain at the center of lawyer conduct rules, the core values offer only limited, although still essential, guidance in the context of regulating the legal profession. The more holistic set of regulatory objectives can offer U.S. jurisdictions clearer guidance than the core values typically provide.³¹⁴

The Commission encourages courts and bar authorities to use the ABA Model Regulatory Objectives when considering the most effective way for legal services to be delivered to the public. A number of jurisdictions are already engaging in this inquiry. For example, at least one U.S. jurisdiction (Colorado) has adopted a new preamble to its rules governing the practice of law that is intended to serve a function similar to the ABA Model Regulatory Objectives for the Provision of Legal Services.315 The Utah Supreme Court Task Force to Examine Limited Legal Licensing used the ABA Model as a reference in considering limited-scope licensure.316 Relatedly, the Conference of Chief Justices passed a resolution encouraging courts to consider the ABA Model Regulatory Objectives.317 In addition, the development and adoption of regulatory objectives with broad application has become increasingly common around the world. In adopting these ABA Model Regulatory Objectives for the Provision of Legal Services, the ABA joins jurisdictions outside the U.S. that have adopted them in the past decade or have proposals pending, including Australia, Denmark, England, India, Ireland, New Zealand, Scotland, Wales, and several Canadian provinces.318

2.2. Courts should examine, and if they deem appropriate and beneficial to providing greater access to competent legal services, adopt rules and procedures for judicially-authorized-and-regulated legal services providers.

The Commission supports efforts by state supreme courts to examine, and if they deem appropriate and beneficial to providing greater access to competent legal services, adopt rules and procedures for judicially-authorized-and-regulated legal services providers (LSPs). Examples

of such LSPs include federally authorized legal services providers and other authorized providers at the state level, such as courthouse navigators and housing and consumer court advocates in New York; courthouse facilitators in California and Washington State; limited practice officers in Washington State; limited license legal technicians in Washington State; courthouse advocates in New Hampshire; and document preparers in Arizona, California, and Nevada. In some jurisdictions, where courts have authorized these types of LSPs, these individuals are required to work under the supervision of a lawyer; in other instances, courts, in the exercise of their discretion, have authorized these LSPs to work independently. In each instance, the LSPs were created and authorized to facilitate greater access to legal services and the justice system, with steps implemented to protect the public through training, exams, certification, or similar mechanisms.

The Commission does not endorse the authorization of LSPs in any particular situation or any particular category of these LSPs. Jurisdictions examining the creation of a new LSP program might consider ways to harmonize their approaches with other jurisdictions that already have adopted similar types of LSPs to assure greater uniformity among jurisdictions as to how they approach LSPs. Jurisdictions also should look to others to learn from their experiences, particularly in light of the lack of robust data readily available in some states on the effectiveness of judicially-authorized-and-regulated LSPs in closing the access to legal services or justice gap. The Commission urges that the ABA Model Regulatory Objectives guide any judicial examination of this subject.

2.3. States should explore how legal services are delivered by entities that employ new technologies and internet-based platforms and then assess the benefits and risks to the public associated with those services.

An increasingly wide array of entities that employ new technologies and internet-based platforms are providing legal services directly to the public without the oversight of the courts or judicial regulatory authorities.³¹⁹ Some of these legal services provider (LSP) entities deliver services that are not otherwise available. Other LSP entities provide services that are available, but provide them at a lower cost. The Commission believes that, in many instances, these innovative LSP entities have positively contributed to the accessibility of legal services.

Some have suggested that new regulatory structures should be created to govern LSPs that offer services to the public. The Commission encourages caution in developing any such structures. One benefit of the existing and limited regulatory environment is that it has nurtured innovation and allowed many new and useful LSP entities to emerge. The unnecessary regulation of new kinds of LSP entities could chill additional innovation, because potential entrants into the market may be less inclined to develop a new service if the regulatory regime is unduly restrictive or requires unnecessarily expensive forms of compliance.

On the other hand, narrowly tailored regulation may be necessary in some instances to protect the public. Moreover, some existing and potential LSP entities currently face uncertainty about whether they are engaged in the unauthorized practice of law, the definition of which in most jurisdictions has not kept up with the new realities of a technology-based service world.320 In these cases, the establishment of new regulatory structures may spur innovation by giving entities express authority to operate and a clear roadmap for compliance.321 By expressly setting out how LSP entities of a particular type can comply with appropriate regulations, potential new entrants may be more inclined to develop new services that ultimately help the consuming public.322

The Commission recommends that, before adopting any new regulations to govern LSP entities, states study the LSPs that are operating in their legal marketplace, collect data on the extent to which these LSPs are benefiting or harming the public, and determine whether adequate safeguards against harm already exist under current law (for example, consumer protections laws).³²³

When conducting this study, input should be sought from a broad array of constituencies, including the public and the types of entities that would be governed by any possible new regulatory structures. In all cases, the touchstone for considering new regulations should be public protection as articulated in the ABA Model Regulatory Objectives for the Provision of Legal Services.

The Commission recognizes that the collection of data and crafting of regulations comes with challenges and opportunities. For example, the services offered by LSP entities are constantly changing, and any regulatory scheme must be flexible enough to address emerging technologies while not impeding the development of new ideas.324 Regulators also may have difficulty offering precise definitions of the kinds of LSP entities they are regulating. Regulators also will have to decide whether they want to regulate all entities that provide a particular kind of service to the public or whether exceptions may be warranted, such as for non-profit and governmental entities that offer services. Although these issues are complicated, the Commission believes that careful study and data-driven analysis can ensure that innovation is encouraged at the same time that the public is adequately protected. The profession's capacity for research and data-driven assessment will only become more important as the pace and diversity of innovation in legal services delivery increases.

2.4. Continued exploration of alternative business structures (ABS) will be useful, and where ABS is allowed, evidence and data regarding the risks and benefits associated with these entities should be developed and assessed.

As part of conducting a comprehensive assessment of the future of the legal profession, the Commission undertook a robust examination of alternative business structures (ABS). The Commission studied the limited development of ABS within the United States as well as the extensive growth of ABS outside the United States. The Commission paid particular attention to empir-

ical studies of ABS that have been undertaken since 2013, when the ABA Commission on Ethics 20/20 completed its review of ABS and decided not to propose any policy changes regarding ABS.

The Commission on the Future of Legal Services released an Issues Paper that identified the potential risks and benefits of ABS as well as the available evidence from the empirical studies.325 In response, the Commission received some comments that advocated for the expansion of ABS in the United States or the further study of the subject. The majority of comments, however, reflected strong opposition to ABS, and some criticized the Commission for even examining the subject in light of existing ABA policy opposing ABS. These comments are archived at https://perma.cc/5T7J-XKT8. Many of the comments opposing ABS focused on the commenters' belief that ABS poses a threat to the legal profession's "core values," particularly to the lawyer's ability to exercise independent professional judgment and remain loyal to the client. Specifically, opponents of ABS fear that nonlawyer owners will force lawyers to focus on profit and the bottom line to the detriment of clients and lawyers' professional values. Critics also argued that there is no proof that ABS has made any measurable impact on improving access to legal services in those jurisdictions that permit ABS.

The Commission's views were informed by the emerging empirical studies of ABS. Those studies reveal no evidence that the introduction of ABS has resulted in a deterioration of lawyers' ethics or professional independence or caused harm to clients and consumers. In its 2014 Consumer Impact Report, the UK Legal Consumer Panel concluded that "the dire predictions about a collapse in ethics and reduction in access to justice as a result of ABS have not materialised."326 Australia also has not experienced an increase in complaints against lawyers based upon their involvement in an ABS. At the same time, the Commission also found little reported evidence that ABS has had any material impact on improving access to legal services.

The Commission believes that continued exploration of ABS will be useful and that, where ABS

is used, additional evidence and data should be collected and the risks and benefits of ABS should be further assessed.³²⁷ The Commission urges the ABA to engage in an organized and centralized effort to collect ABS-related information and data, which should include information and data compiled at the jurisdictional level. To assist this ef-

fort, jurisdictions that permit ABS should seek to compile relevant data on this subject as well. By creating a centralized repository for this information and data, the ABA can continue to perform a vital and longstanding function: ensuring that deliberations on a subject of import to the profession are fact-based, thorough, and professional.

Recommendation 3.

All members of the legal profession should keep abreast of relevant technologies.

Rule 1.1, Comment [8] of the ABA Model Rules of Professional Conduct provides that, in order for lawyers to maintain professional competence, they must "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."328 To help lawyers satisfy this professional obligation, bar associations should offer continuing legal education on technology and educate their members through website content, e-newsletters, bar journal articles, meeting panels and speakers, technology mentoring programs, and other means. The Florida Bar Board of Governors, for example, has approved a mandatory technology-based continuing legal education requirement.329 When developing competence in this area, lawyers should pay particular attention to technology that improves access to the delivery of legal services and makes those services more affordable to the public.

"Other professions have embraced technology more quickly than the legal profession. We must adapt to fulfill our mission and do so true to first principles."

Stephen A. Saltzburg

WALLACE AND BEVERLEY WOODBURY UNIVERSITY PROFESSOR

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

WASHINGTON, DC

Law students also should graduate with this obligation firmly in mind. To achieve this goal, an increasing number of law schools include legal technology as part of the curriculum—a development that the Commission endorses as essential. The ABA Legal Technology Resource Center stands as a model for how technology resources and expertise can be made available to bar association members.

Recommendation 4.

Individuals should have regular legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups.

Legal checkups are an underused resource to help solve individuals' problems and expand access to legal services. Many people with civil justice problems do not recognize that they have needs that require, or would be best addressed by, legal solutions. Regular legal checkups would help to inform people of their legal needs and to identify needed legal assistance, which may take various forms.³³⁰

Legal checkups are analogous to medical checkups. Sometimes a person is aware of a problem, as indicated by an overt symptom, such as fever or pain (indicating a medical problem) or receipt of a summons or complaint (indicating a legal problem). At other times, medical and legal issues are only discovered after using a diagnostic tool. As Professor Rebecca Sandefur's research has shown, many individuals fail to recognize when they have a legal problem, and even when they do, they fail to seek legal assistance.³³¹

Legal checkups are not new. Beginning in the 1950s, Louis M. Brown, a practitioner and law professor, wrote extensively about "preventive law," the client-centric idea that lawyers should employ prophylactic measures to forestall legal problems, and he developed the idea of legal checkups. Bar associations and other organizations have periodically promoted legal checkups, but many early initiatives have fallen into disuse. Some legal checkups are available online, but apart from some notable exceptions, 332 few take advantage of expert system technology to create branching inquiries that enable people to quickly and efficiently consider a range of issues.

The Commission believes that all individuals should have legal checkups on a periodic basis, especially when major life events occur (for example, marriage, divorce, the birth of a child). Additionally, lawyers, bar associations, and others should be encouraged to develop and administer legal checkups for the benefit of the public and should determine what consumers most want and need from a legal checkup.³³³

To protect the public and increase access to legal services, legal checkups should meet certain basic standards. As a starting point, the Commission recommends that the ABA adopt guidelines for legal checkups that are consistent with the following:³³⁴

Proposed ABA Guidelines for Legal Checkups

Preamble: The purpose of legal checkups is to empower people by helping them identify their unmet legal needs and make informed decisions about how best to address them. Legal checkups should be easy for individuals to use, and the results should be easy to understand.

- 1. Ease of Understanding: Legal checkups should be designed using plain language so that people who do not have legal training can easily understand the language used. Any words that are not easily understandable by someone without legal training should be defined and explained using plain language.
- Candor and Transparency: The promotion, distribution, and content of legal checkups must not be false, misleading, or deceptive.
- Substantive Quality: Legal checkups should be created by or in consultation with individuals who are competent in the applicable law that the checkup addresses.
- Communication: Legal checkup providers should clearly communicate to users that the quality and effectiveness of the checkup depends on the users providing full and accurate information.
- Limits of the Checkup: Legal checkup providers should give users conspicuous notice that a legal checkup is primarily designed to identify legal issues, not to solve them, and is not a substitute for legal advice.
- 6. Resources: If a legal checkup identifies legal needs, it should direct the user to appropriate resources, such as lawyer referral services, legal self-help services, social services, government entities, or practitioners. Users should be informed that they are not obligated to use the services of any particular resource or service provider.
- 7. Affordability: Legal checkups should be available free of charge or at low cost to

people of limited or modest means. If providers charge for legal checkups, the price should be commensurate with the user's ability to pay and clearly disclosed in advance.

8. Accessibility:

- a. To the extent feasible, legal checkups should be accessible to all users, including people who do not speak English and people with disabilities.³³⁵
- b. Legal checkups should be available to the public in a wide variety of venues (for example, public libraries, domestic violence shelters, social services offices, membership organizations, etc.).
- Web-based legal checkups should be available on a wide variety of electronic platforms, including mobile platforms.
- d. The content of legal checkups, and their terms of use and privacy policies, should be accessible, written in plain language, and easy to navigate.
- 9. Jurisdiction: Where legal checkups are state-specific, the provider should identify the relevant state law. Where legal checkups are not state-specific, but implicate

- state law, the provider should indicate that not all content may apply in the user's state.
- 10. Compliance with Law: The development and administration of legal checkups must comply with all applicable law,³³⁶ including laws and rules regarding the unauthorized practice of law.
- 11. Privacy and Security of Personal Information: Providers of legal checkups—whether web- or paper-based—should take appropriate steps to protect users' personal information from unauthorized access, use, and disclosure. Providers should not disclose such information, or use it for any purpose, apart from the purpose of providing the legal checkup, without the user's express authorization, except as required by law or court order.
- 12. Provider Information: Legal checkups should include the provider's contact information (e.g., name, address, and email address) and all relevant information about the provider's identity, including legal name.
- 13. Dating of Material: The legal checkup should include a prominent notice of the date on which the legal checkup was last updated.

Recommendation 5.

Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process.

5.1. Physical and virtual access to courts should be expanded.

Courts should make efforts to accommodate the schedules of litigants with employment or family obligations, including remaining open for some functions during at least some evening and weekend hours. Accessibility of physical courthouses, courtrooms, and administrative hearing rooms should be expanded. This includes structural and

technological accommodations that permit all citizens to use the courts equally and that meet and, where possible, exceed legal requirements regarding physical accessibility.

Courts also should consider whether the physical presence of litigants, witnesses, lawyers, experts, and jurors is necessary for hearings, trials, and other proceedings or whether remote participation through technology is feasible with-

out jeopardizing litigant rights or the ability of lawyers to represent their clients. Technologies should be adopted to aid lawyers with limitations on abilities to better serve their clients and promote greater accessibility for experts, jurors, and witnesses with limitations on abilities. Courts should use current and developing communication technologies, with appropriate security in place, to make available by remote access document filing, docket/record searches, and other similar services. Remote, real-time access to legal proceedings also should be explored. Courthouse facilities should be welcoming by design, and court personnel should be welcoming in attitude and demeanor. Courthouses exist to serve the public, and people should not feel intimidated or unwelcome in the pursuit of justice.

The Commission also recommends an increase in the range of locations for the public to pursue legal assistance and resolve disputes. For example, it may be helpful to co-locate brick-and-mortar legal resource centers in community facilities frequently accessed by the public, such as post offices, public libraries and law libraries, community centers, and retail settings. The concept of providing greater availability of services is similar to the expanded availability of flu shots in retail drugstores.

5.2. Courts should consider streamlining litigation processes through uniform, plain-language forms and, where appropriate, expedited litigation procedures.

The Commission recommends the development of national and statewide uniform court forms and procedures in appropriate areas so that individuals can more readily obtain proper documents from centralized sources and independently (or, where appropriate, with assistance) achieve their legal objectives. Simplified forms and procedures should provide straightforward, plain-English notifications, instructions, paperwork, and explanatory materials to guide members of the public through their dealings with the courts. Court rules, forms, and procedures should be as uniform as possible throughout the state to enhance the efficient and fair administration of

justice. Litigants should be permitted to operate under the same rules and file the same forms in every court within a state. The number of forms required for a particular proceeding should not be unduly burdensome; as just one example, in New York State an uncontested divorce requires between twelve and twenty-one forms depending on the jurisdiction. Even twelve forms are too many. A primary value served by all rules and procedures should be efficiency in resolving disputes and finding the best use of party, attorney, and court resources.

The ABA, the National Center for State Courts, the Conference of Chief Justices, and the Conference of State Court Administrators should collaborate to create a National Commission on Uniform Court Forms, similar to the National Conference of Commissioners on Uniform State Laws. The purpose of the Commission would be to generate model forms to be used by both represented and unrepresented litigants on a multi-state basis in ways that create consistency and accommodate simplified technological document preparation.

The Commission also recommends implementation of expedited litigation, where appropriate. For example, in 2013 "the Texas legislature mandated the Texas Supreme Court to adopt rules to lower the cost of discovery and expedite certain trials through the civil justice system"³³⁷ where the amount in controversy does not exceed \$100,000. Similarly, courts in Arizona, California, Nevada, New York, Oregon, South Carolina, and Utah have adopted expedited processes for the purposes of either "streamlining the pretrial process to allow litigants to proceed to trial at lower cost" or "streamlining the trial itself, which indirectly affects the pretrial process,"³³⁸ thus reducing expenses and time invested by litigants to resolve their disputes.

5.3. Multilingual written materials should be adopted by courts, and the availability of qualified translators and interpreters should be expanded.

To ensure access to justice for all, bar associations and courts should implement systems and pro-

Multilingual Courts



325,000

judicial proceedings requiring an interpreter annually



119

different languages spoken by interpreters annually

cesses to assure that people who face language barriers are not at a disadvantage when using legal processes. As Judge Irving R. Kaufman wrote nearly 50 years ago, court interpreting services are important "[n]ot only for the sake of effective cross examination ... but as a matter of simple humaneness..."339 The importance of these services has only grown: a 2014 study concluded that interpreters were needed in more than 325,000 judicial proceedings in 119 different languages annually.340 At a minimum, courts should comply with, if not exceed, the ABA Standards for Language Access in Courts, adopted as policy in 2012.341 These Standards contain a detailed explanation of when interpreters and other language access assistance are constitutionally or statutorily required in state or federal courts. In addition, all written materials, documentation, brochures, forms, websites, and other information sources should strive to eliminate or significantly reduce language barriers.

Given the costs of in-person, individualized services necessary for qualified translators, it might be possible to use technology to facilitate remote interpreter services. For example, one court system in Florida, which was highlighted at an innovation showcase during the ABA National Summit on Innovation in Legal Services, developed a mechanism for virtual remote interpreting.³⁴²

5.4. Court-annexed online dispute resolution systems should be piloted and, as appropriate, expanded.

As a tool to prevent the escalation of conflicts, alternative dispute resolution (ADR) represents an important means for improving access to the legal system. ADR is an area of legal services that has for decades been devoted to reducing costs, increasing efficiency, and improving results for participants in the legal system. By several measures, ADR outperforms litigation.343 Because ADR techniques reduce the time and costs involved in resolving conflict, such techniques can be used to provide greater access to the legal system, especially for the poor, the middle class, and small businesses. The term ADR also encompasses court programs, community mediation, and restorative justice. What began years ago as an exploration of alternatives to litigation has become pervasive and grown to the point that it is no longer the alternative, but a mainstay of legal services. The future of legal services likely will see greater growth in all of these areas.

Online dispute resolution (ODR) has been used in the private sector as a form of ADR to help businesses and individuals resolve civil matters without the need for court proceedings or court appearances. A court-annexed ODR system would help relieve the overburdened court system and facilitate judicial efficiency, as well as preserve the constitutional and traditional role of the courts in dispute resolution, at a time when ODR systems are increasingly privatized. By harnessing technology, ODR holds the promise of delivering even greater efficiency in conflict resolution than traditional ADR does, thereby offering even greater access to justice.³⁴⁴

Recommendation 6.

The ABA should establish a Center for Innovation.

Innovation is an ongoing process that requires sustained effort and resources as well as a culture that is open to change. To sustain and cultivate future innovation, the ABA should establish a Center for Innovation. The purpose of the proposed Center is to position the ABA as a leader and architect of the profession's efforts to increase access to legal services and improve the delivery of, and access to, those services to the public through innovative programs and initiatives. Drawing on the expertise of the National Center for State Courts, Legal Services Corporation, Federal Judicial Center, and Conference of Chief Justices, along with law schools, state, local and specialty bars and the judiciary, the Center will seek vital input from and collaboration with technologists, innovators, consumers of legal services, and those in public policy, to develop new projects, programming, and other resources to help drive innovation in the delivery of legal services.

As has been demonstrated in other industries and professions that have been disrupted by advances

"Now is a time for great opportunity and excitement in the legal industry. If you have an idea for how to make the legal industry more effective or how to serve clients better, the time is ripe for becoming a leader and defining these new service offerings and business models for law. We need entrepreneurial lawyers to create new solutions for getting people legal help, new roles for JDs, and new types of interdisciplinary, user-centered legal organizations."

Margaret Hagan

FELLOW, STANFORD LAW'S CENTER ON THE LEGAL PROFESSION AND A LECTURER AT STANFORD INSTITUTE OF DESIGN STANFORD, CA

in technology, problems cannot be addressed by relying on existing practices. Industries as diverse as consulting, medicine, and personal finance have invested in research and development laboratories to create new service offerings and substantially improve client relationships. Lawyers must do the same, and the Innovation Center can play an active role in these efforts.

The Innovation Center would be responsible for proactively and comprehensively encouraging, supporting, and driving innovation in the legal profession and justice system. The Center could serve a variety of functions, including the following:

- Providing materials and guidance to futures commissions organized by state and specialty bar associations;
- Serving as a resource for ABA members by producing educational programming for lawyers on how to improve the delivery of, and access to, legal services through both new technologies and new processes;
- Maintaining a comprehensive inventory and evaluation of the innovation efforts taking place within the ABA and in the broader legal services community, nationally and internationally; and
- Operating a program of innovation fellowships to provide fellows in residence with the opportunity to work with a range of other professionals, such as technologists, entrepreneurs, and design professionals to create delivery models that enhance the justice system.

The Center should be sufficiently funded to enable the experimentation, examination, and assessment of creative delivery methods that advance access to civil legal services, reform the criminal justice system, and effectively advance diversity and inclusion throughout the justice system in the United States.

Recommendation 7.

The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.

"The National Summit on Innovation in Legal Services in May 2015 underscored the importance of looking beyond the legal profession for guidance on how lawyers can improve client service. Other disciplines are far ahead of ours in their measurement of consumer needs and in their design of user-focused solutions to meet those needs."

James J. Sandman

PRESIDENT
LEGAL SERVICES CORPORATION
WASHINGTON, DC

7.1. Increased collaboration with other disciplines can help to improve access to legal services.

Other disciplines and professions have important insights to share on improving access to and the delivery of legal services. For example, at the ABA National Summit on Innovation in Legal Services held at Stanford in May 2015, Richard Barton, founder of Expedia and Zillow, described the transformative power of technology-enabled user reviews in the travel and real estate industries. He predicted that it is only a matter of time before online ratings and digital marketing become the dominant way for individuals to find a lawyer.345 Similarly, others spoke about the importance of incorporating engineering, information economics, and design-thinking into the development of new delivery models and technology tools for the public to access legal services. Indeed, such tools are already driving important changes to how the public accesses some kinds of legal services.

History tells us that the most important innovations—the innovations that disrupt and trans-

form an industry, bring down the cost of goods and services, and ultimately help the public—are not created by incumbents alone. Rather, they are created with the assistance of outsiders who bring fresh perspectives and new approaches. The Commission believes that lawyers will achieve greater innovation and increased efficiencies if they embrace interdisciplinary collaborations and work closely with people from other fields.

7.2. Law schools and bar associations, including the ABA, should offer more continuing legal education and other opportunities for lawyers to study entrepreneurship, innovation, the business and economics of law practice, and other relevant disciplines.

Experts on the use of technology in legal services delivery have emphasized the importance of providing lawyers with new skills and knowledge: "Training in law practice management and law practice technology is a critical solution that will further align the skills that law students must have upon graduation with the employment needs of a radically changing legal market."346 With the legal market changing dramatically, lawyers today "more than any generation of lawyers ... will have to be entrepreneurs rather than employees working for somebody else."347 Moreover, lawyers who learn entrepreneurial skills can help solve the justice gap. With millions of people needing legal representation and thousands of lawyers unemployed or underemployed, students with this training can "create better delivery models that match appropriately qualified lawyers with the clients who need them."348

Interdisciplinary knowledge is also critical in the criminal realm. Because many individuals who commit criminal acts suffer from mental illness, defense lawyers will provide better representation to their clients if they understand those issues. Thus, the Commission endorses ABA Standard for Criminal Justice 7-1.3, which calls on law schools to "provide the opportunity for all students ... to become familiar with the issues involved in mental health and mental retardation law and mental health and mental retardation professional participation in the criminal process." ³⁴⁹ Further,

"bar associations, law schools, and other organizations having responsibility for providing continuing legal education should develop and regularly conduct programs offering advanced instruction on mental health and mental retardation law and mental health and mental retardation professional participation in the criminal process." 350

Recommendation 8.

The legal profession should adopt methods, policies, standards, and practices to best advance diversity and inclusion.

The legal profession should reflect the diversity of American society. To achieve this goal, law schools, lawyers, and courts should establish pipeline programs and other diversity-focused recruitment initiatives. They must also ensure equal access and treatment of all persons regardless of age, gender, sex, national origin, race, religion, ethnicity, sexual orientation, gender identity, physical or learning disabilities, and cultural differences.

ABA President 2015-16 Paulette Brown's Diversity and Inclusion 360 Commission is engaged in important work to advance these and related goals,³⁵¹ and it is the obligation of the entire profession to undertake similar efforts. The Commission encourages courts and bar associations to comply with ABA Resolution 107, which calls for mandatory continuing legal education (MCLE)

requirements to include programs on diversity and inclusion in the legal profession. While forty-five states currently have MCLE, only two—California and Minnesota—have already adopted programming that satisfies this recommendation.³⁵²

The legal profession must ensure that the justice system in all of its parts, including law enforcement, strives to operate free of bias, both explicit and implicit. To underscore this goal, the legal profession should consider incorporating unconscious bias and diversity sensitivity training into bar associations, law schools, law practices, courts, and other organizations concerned with the delivery of legal services. Recommended tools for engaging in this training and other resources can be found on the ABA Diversity and Inclusion 360 Commission's website.³⁵³

Recommendation 9.

The criminal justice system should be reformed.

While reform to the criminal justice system was not a central focus of the Commission's charge, the Commission recognized the profound and pervasive impact that the criminal justice system has on individuals, the rule of law, and the public's perception of the administration of justice, both civil and criminal. The Commission notes that, although deserving and important calls for reform have been made over the years, considerable work remains to be done. The Commission highlights and urges several reforms that would make much-needed progress.

9.1. The Commission endorses reforms proposed by the ABA Justice Kennedy Commission and others.

In 2004, the ABA Justice Kennedy Commission submitted a Resolution (approved by the House of Delegates) that urged "states, territories, and the federal government to ensure that sentencing systems provide appropriate punishment without over-reliance on incarceration."354 The Resolution recommended that lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community and who commit the most serious offenses, and alternatives to incarceration should be available for offenders who pose minimal risk to the community and appear likely to benefit from rehabilitation efforts. The Resolution sets out a series of recommended actions, which the Commission endorses, including:

- Repealing mandatory minimum sentences;
- Providing for guided discretion in sentencing, consistent with Blakely v. Washington, while allowing courts to consider the unique characteristics of offenses and offenders that may warrant an increase or decrease in a sentence;
- Requiring sentencing courts to state the reason for increasing or reducing a sentence,

- and allowing appellate review of such sentences;
- Considering diversion programs for less serious offenses, and studying the cost effectiveness of treatment programs for substance abuse and mental illness;
- Giving greater authority and resources to an agency responsible for monitoring the sentencing system;
- Developing graduated sanctions for violations of probation and parole; and
- Having Congress give greater latitude to the United States Sentencing Commission in developing and monitoring guidelines, and to reinstate a more deferential standard of appellate review of sentences.

The House of Delegates approved another ABA Justice Kennedy Commission Resolution urging: (1) state, territorial and federal governments to establish standards and a process to permit prisoners to request a reduction of their sentences in exceptional circumstances; (2) expanded use of the federal statute permitting reduction of sentences for "extraordinary and compelling reasons;" (3) the United States Sentencing Commission to develop guidance for courts relating to the use of this statute; and (4) the expanded use of executive clemency to reduce sentences, and of processes by which persons who have served their sentences may request a pardon, restoration of legal rights, and relief from collateral disabilities.355 The Commission similarly endorses these recommended reforms.

In April–July 2015, the ABA and the NAACP Legal Defense Fund held a series of conversations aimed at ridding the criminal justice system of the vestiges of racism that, taken together, threaten the promise of equal justice. Bringing together representatives of law enforcement, prosecutors, the judiciary, public defenders and others integrally

involved in the system, the group examined key factors leading to the inherent threats of a lack of confidence and bias, both explicit and unconscious, in the justice system.

Following those meetings, a Joint Statement was issued, endorsed by the ABA Board of Governors, that states in part:

In Ferguson (MO), the Justice Department found that the dramatically different rates at which African-American and White individuals in Ferguson were stopped, searched, cited, arrested, and subjected to the use of force could not be explained by chance or differences in the rates at which African-American and White individuals violated the law. These disparities can be explained at least in part by taking into account racial bias. Given these realities, it is not only time for a careful look at what caused the current crisis, but also time to initiate an affirmative effort to eradicate implied or perceived racial bias—in all of its forms—from the criminal justice system.³⁵⁶

The statement went on to recommend a wide range of actions, such as better data collection and disclosure, implicit bias training, more diversity in prosecutors' and law enforcement offices, greater stakeholder dialogue and increased accountability. The Commission supports these recommendations as well.

9.2. Administrative fines and fees should be adjusted to avoid a disproportionate impact on the poor and to avoid incarceration due to nonpayment of fines and fees.

The Commission supports the recent efforts by the U.S. Department of Justice to reform harmful and unlawful practices related to the assessment and enforcement of fines and fees.³⁵⁷ The Commission endorses the following DOJ principles:

 Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination ...

- and establishing that the failure to pay was willful;
- Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
- Courts must not condition access to a judicial hearing on the prepayment of fines or fees;
- Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
- Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- Courts must safeguard against unconstitutional practices by court staff and private contractors.³⁵⁸

Another important initiative in this area is the recent creation of the National Task Force on Fines, Fees, and Bail Practices, which was formed with the support of the State Justice Institute in 2016 by the Conference of Chief Justices and the Conference of State Court Administrators.³⁵⁹ The Task Force seeks to address the ongoing impact that court fines, fees and bail practices have on communities, especially the economically disadvantaged, across the United States.

9.3. Courts should encourage the creation of programs to provide training and mentoring for those who are incarcerated with a goal of easing re-entry into society as productive and law-abiding citizens.

A growing consensus has emerged that new solutions are needed for overcrowded prisons. One way to safely reduce prison populations is to develop new and innovative rehabilitation methods. The Boston Reentry Initiative is one such program. The goal of the program is to help "adult offenders who pose the greatest risk of committing violent crimes when released from jail transition back to their neighborhoods." This community partnership "brings together law enforcement, social service agencies, and religious institutions to start working with inmates while they are still incarcerated." The program has worked: "Harvard researchers found that participants had a re-arrest rate 30 percent lower than that of a matched comparison group." 362

Another example is a re-entry program started by the Honorable Laurie A. White and the Honorable Arthur Hunter, criminal court judges in New Orleans.363 Judge White and Judge Hunter created the Orleans Parish Re-entry Program to facilitate mentoring and job-skills training conducted by life-sentenced inmates for felony convicted inmates who will re-enter society. The program has been implemented, at no cost to the taxpayers, in Louisiana's maximum-security prison. Participating re-entry inmates must obtain their GED and undergo drug treatment and pre-release programming in order to receive a reduced sentence on their felony convictions. The mentors are trained to teach the newer inmates in job skills to ready them for careers, such as automotive mechanic or electrician, and live with the re-entry program inmates in special housing units so that they can mentor them and give them the skills and confidence they need to successfully re-enter society.

Elected state prosecutors have taken the lead in many jurisdictions to develop re-entry and diversion programs and to measure the success of their offices by the extent they promote overall community safety rather than by the number of convictions they can muster. After resisting the concept of re-entry for many years, the DOJ has followed the lead of these state prosecutors and has established a re-entry program as part of every U.S. Attorney office.

9.4. Minor offenses should be decriminalized to help alleviate racial discrepancies and over-incarceration.

A growing consensus has emerged that one way to fix the overcrowded prison system and alleviate racial discrepancies is to reclassify minor offenses so that they do not constitute criminal behavior. This will relieve burdens on prosecutors, courts, and defense systems. The Department of Justice recently acknowledged this problem in its report on Ferguson, Missouri. Among its many findings, the DOJ concluded that the abusive use of arrest warrants and fines in poor communities has been facilitated and increased as a consequence of the pervasive lack of legal assistance with municipal and traffic violations.³⁶⁴

The Commission commends the efforts of The Pew Charitable Trusts on these issues related to over-criminalization of conduct. Through its Public Safety Performance Project, Pew – in partnership with the DOJ's Bureau of Justice Assistance, the Council of State Governments Justice Center, the Crime and Justice Initiative, the Vera Institute of Justice, and other organizations - have helped thirty-one states engage in reform of their sentencing and corrections policies since 2007.365 For example, in 2014, with Pew providing intensive technical assistance, Mississippi adopted sweeping sentencing and corrections reforms.366 The reforms aim to refocus prison space on violent and career criminals, strengthen community supervision, and ensure certainty and clarity in sentencing. Among other improvements, the reforms increase access to prison alternatives, including specialty courts, raise the felony theft threshold, and expand parole eligibility for nonviolent offenders. The reforms are projected to avert prison growth and save the state \$266 million through 2024.

9.5. Public defender offices must be funded at levels that ensure appropriate caseloads.

Crushing caseloads are perhaps the most vexing problem facing public defense in the United States. When attorneys are saddled with hundreds or thousands of cases, core legal tasks—investigation, legal research, and client communication—are quickly jettisoned. As a result, clients who have a right to effective, ethical counsel receive only nominal representation.

In Gideon v. Wainwright, the United States Supreme Court held that the Sixth Amendment requires states to appoint counsel to indigent felony defendants. The Supreme Court later emphasized that "the right to counsel is the right to the effective assistance of counsel." Additionally, the ABA Model Rules of Professional Conduct require competent and diligent representation. 368

The problem is that even the most skilled attorneys cannot deliver effective, competent, and diligent representation when representing hundreds or thousands of clients per year. In Rhode Island, the average caseload is over 1,700 cases per year; in Upstate New York, one attorney represented over 2,200 clients; and in Illinois, a public defender handled 4,000 cases during the course of a year. ³⁶⁹ For too long, ethical and constitutional requirements have been not been met under the weight of grossly excessive workloads.

The profession should not stand by while defendants—many innocent—suffer. The Commission encourages bold innovations to improve public defense workloads. ABA workload studies, such as those in Missouri, Tennessee, Rhode Island, Colorado, and Louisiana, are just the first step. The ABA and other bar associations also must support lobbying, education, and, where necessary, litigation, to ensure that lawyers have the resources that they need to comply with their ethical and constitutional duties.

Recommendation 10.

Resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public's unmet needs for legal services.

10.1. Legal aid and pro bono efforts must be expanded, fully funded, and better promoted.

The ABA should continue to support the full funding of the Legal Services Corporation and should lead efforts to maintain and increase the resources of civil legal aid societies. The ABA should encourage the maintenance and development of effective programs to provide pro bono representation and other affordable sources of professional legal services for low-income citizens. Courts should adopt rules that encourage pro bono representation by lawyers, such as emeritus rules, CLE credit for service, reporting obligations, court processes that prioritize service

and minimize time required for pro bono lawyers/ cases, and other measures that provide access and address legal needs.

Existing pro bono and modest means offerings and programs should be better-promoted and marketed to those in need of legal representation. One example of consumer-centric delivery of services is One Justice's "Justice Bus Project," which "recruits, trains and transports law student and attorney volunteers to provide much-needed legal clinics in rural, isolated, and underserved areas of California."³⁷⁰ Efforts to provide free, online training to pro bono attorneys, such as California's Pro Bono Training Institute (made possible by the LSC's Pro Bono Innovation Fund), should be

expanded.³⁷¹ Adequate compensation and funding should be provided to those who deliver legal services to low-income populations to ensure effective and competent representation.

Moreover, the ABA should work in partnership with appropriate public and private entities to increase the availability of affordable legal services to the whole public without regard to income. Legal aid and pro bono programs that are means-tested should take steps to assist those who are not income-qualified in finding a lawyer or other appropriate legal services provider who may be able to provide assistance. Resources may include bar association referral services, modest means panels, lawyer incubators, practitioners who provide unbundled legal services and other legal services providers.

10.2. Public education about how to access legal services should be widely offered by the ABA, bar associations, courts, lawyers, legal services providers, and law schools.

The Commission recommends the continuation and expansion of the role of the ABA and other bar associations in helping the public understand when a problem can be resolved within the legal system and about avenues for effective resolution of problems that have a legal dimension. Bar associations and courts should make public education materials available (in all current media formats) to explain court procedures and frequently encountered legal issues; these materials should be in clear, non-technical language. These entities also should reach out to local and statewide news media to build relationships, improve the quality of law-related journalism, and enhance editorial understanding of issues facing the courts. Courts should develop simple legal instructional

"The future will demand our full collective resources. Law students, lawyers, judges, innovators, and legal providers of all varieties will need to work collaboratively to achieve a sustainable, relevant, and valuable legal system."

Carmen M. Garcia

ASSOCIATE MEMBER, NEW JERSEY STATE PAROLE BOARD

ABA FUTURES COMMISSION LIAISON,
HISPANIC NATIONAL BAR ASSOCIATION

TRENTON, NJ

materials, including sample pleadings and forms designed for use by people who do not have legal training and make them available at court facilities and via online and other remote access technologies. In addition to printed materials, self-help videos and online tutorials that can be accessed at any time from a home computer or public access terminal should also be explored.

The public also needs greater information about the distinction between legal representation by a lawyer, a licensed or certified legal services provider, and an unregulated legal services provider. This information could be provided, for example, through a public education campaign or informational disclaimers. Bar associations and entrepreneurs should collaborate to explore the possibilities of public education about legal services through the use of online games, which would embed access to legal resources within the gaming programs.³⁷² The ABA Blueprint Project, for example, recommends using gamification to increase the public's awareness about legal services.³⁷³

Recommendation 11.

Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives.

There is an unfortunate lack of empirical evidence about the effectiveness of various legal innovations that have been undertaken around the country. As a result, it is often difficult for bar associations, courts, law schools, and individual lawyers to know how to best use limited resources when seeking to implement innovations. To ensure that successful innovations are replicated and unsuccessful innovations are not, it is important to begin collecting and sharing relevant data about existing and future efforts. Law schools, bar foundations and research entities should collaborate to measure the outcomes, impact, and effectiveness of ongoing and emerging models of delivering legal services, and identify potential improvements to those models.

The Commission identified many existing innovations in its Findings that have had apparent success in enhancing access to and the delivery of legal services. The Commission encourages further study via data and metrics about the impact of these innovations on how legal services are delivered and accessed. As appropriate, these innovations should be expanded and promoted widely.

The Commission is heartened by recent efforts to engage in needed analysis, such as the Roles

"Rigorous, grounded research is essential to ensure that new—and existing—forms of service meet regulatory objectives."

Elizabeth Chambliss

PROFESSOR OF LAW AND DIRECTOR, NELSON MULLINS RILEY & SCARBOROUGH CENTER ON PROFESSIONALISM, UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW

COLUMBIA, SC

Beyond Lawyers Project—jointly supported by the American Bar Foundation, the National Center for State Courts, and the Public Welfare Foundation.³⁷⁴ For example, the Project's researchers have developed conceptual frameworks for both designing and evaluating programs in which people who are not fully qualified lawyers are providing assistance to the public on matters that were traditionally provided only by lawyers. The frameworks are accessible to jurisdictions seeking to design new programs and to those seeking to evaluate the efficacy and sustainability of programs currently in operation.

Recommendation 12.

The ABA and other bar associations should make the examination of the future of legal services part of their ongoing strategic long-range planning.

The nature of a report on the future of legal services inevitably means that it soon will become out-of-date. As such, the Commission recommends that the ABA and other bar associations make the examination of the future of legal services part of their ongoing strategic long-range planning. The Commission also recommends that all bar associations engage in futures efforts of their own, similar in nature to the grassroots meetings held across the country over the past

"We are going to have to continue this conversation because I guarantee you that many of the things we think are innovative today, this time next year will already be obsolete."

The Hon. Lora Livingston 261ST CIVIL DISTRICT COURT, TRAVIS COUNTY, TEXAS

two years and the National Summit on Innovation in Legal Services. A toolkit to facilitate futures meetings, task forces, and summits is available on the Commission's website, along with examples from various states.³⁷⁵

CONCLUSION

"The future is literally in our hands to mold as we like. But we cannot wait until tomorrow. Tomorrow is now."

Eleanor Roosevelt376

he Commission's Report on the Future of Legal Services in the United States sets forth an ambitious agenda for improving how legal services are delivered and accessed in the 21st century. As noted at the outset of this Report, some may view the Commission's recommendations as too controversial, and others may view the recommendations as insufficiently bold. What is clear, however, is that the solutions will

require the efforts of all stakeholders in order to implement the recommendations contained in this Report. Of course, many of the recommendations will need to be revisited as new ideas, data, and information become available. In the meantime, the Commission calls for the implementation of this Report's recommendations. The future is in our hands, and the time to act is now.

APPENDIX 1. RESOLUTION 105 AND REPORT ON ABA MODEL REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES, ADOPTED FEBRUARY 2016

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8, 2016

RESOLUTION

RESOLVED, That the American Bar Association adopts the ABA Model Regulatory Objectives for the Provision of Legal Services, dated February, 2016.

ABA Model Regulatory Objectives for the Provision of Legal Services

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. 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
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information

- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs
- J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

FURTHER RESOLVED, That the American Bar Association urges that each state's highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court's existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.

FURTHER RESOLVED, That nothing contained in this Resolution abrogates in any manner existing ABA policy prohibiting non lawyer ownership of law firms or the core values adopted by the House of Delegates.

REPORT

Background on the Development of ABA Model Regulatory Objectives for the Provision of Legal Services

The American Bar Association's Commission on the Future of Legal Services was created in August 2014 to examine how legal services are delivered in the U.S. and other countries and to recommend innovations that improve the delivery of, and the public's access to, those services.¹ As one part of its work, the Commission engaged in extensive research about regulatory innovations in the U.S. and abroad. The Commission found that U.S. jurisdictions are considering the adoption of regulatory objectives to serve as a framework for the development of standards in response to a changing legal profession and legal services landscape. Moreover, numerous countries already have adopted their own regulatory objectives.

The Commission concluded that the development of regulatory objectives is a useful initial step to guide supreme courts and bar authorities when they assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal services providers. Given that supreme courts in the U.S. are beginning to consider the adoption of regulatory objectives and given that providers of legal assistance other than lawyers are already actively serving the American public, it is especially timely and important for the ABA to offer guidance in this area.

This Report discusses why the Commission urges the House of Delegates to adopt the accompanying Resolution.

The Purpose of Model Regulatory Objectives for the Provision of Legal Services

The Commission believes that the articulation of regulatory objectives serves many valuable purposes. One recent article cites five such benefits:

First, the inclusion of regulatory objectives definitively sets out the purpose of lawyer regulation and its parameters. Regulatory objectives thus serve as a guide to assist those regulating the legal profession and those being regulated. Second, regulatory objectives identify, for those affected by the particular regulation, the purpose of that regulation and why it is enforced. Third, regulatory objectives assist in ensuring that the function and purpose of the particular [regulation] is transparent. Thus, when the regulatory body administering the [regulation] is questioned—for example, about its interpretation of the [regulation]—the regulatory body can point to the regulatory objectives to demonstrate compliance with function and purpose. Fourth, regulatory objectives can help define the parameters of the [regulation] and of public debate about proposed [regulation]. Finally, regulatory objectives may help the legal profession when it is called upon to negotiate with governmental and nongovernmental entities about regulations affecting legal practice.2

In addition to these benefits, the Commission believes Model Regulatory Objectives for the Provision of Legal Services will be useful to guide the regulation of an increasingly wide array of already existing and possible future legal services providers.³ The legal landscape is changing at an

Additional information about the Commission, including descriptions of the Commission's six working groups, can be found on the Commission's website as well as in the Commission's November 3, 2014 issues paper. That paper generated more than 60 comments.

² Laurel Terry, Steve Mark & Tahlia Gordon, Adopting Regulatory Objectives for the Legal Profession, 80 Fordham Law Review 2685, 2686 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085003. The original quote refers to "legislation" rather than "regulation," but regulatory objectives serve the same purpose in both cases.

³ As noted by the ABA Standing Committee on Paralegals in

unprecedented rate. In 2012, investors put \$66 million dollars into legal service technology companies. By 2013, that figure was \$458 million.⁴ One source indicates that there are well over a thousand legal tech startup companies currently in existence.⁵ Given that these services are already being offered to the public, the Model Regulatory Objectives for the Provision of Legal Services will serve as a useful tool for state supreme courts as they consider how to respond to these changes.

A number of U.S. jurisdictions have articulated specific regulatory objectives for the lawyer disciplinary function.⁶ At least one U.S. jurisdiction (Colorado) is considering the adoption of regulatory objectives that are intended to have broader application similar to the proposed ABA Model Regulatory Objectives for the Provision of Legal Services.⁷ In addition, the development and adoption of regulatory objectives with broad applica-

its comments to the Commission, paralegals already assist in the accomplishment of many of the Commission's proposed Regulatory Objectives. tion has become increasingly common around the world. Nearly two dozen jurisdictions outside the U.S. have adopted them in the past decade or have proposals pending. Australia, Denmark, England, India, Ireland, New Zealand, Scotland, Wales, and several Canadian provinces are examples.⁸

These Model Regulatory Objectives for the Provision of Legal Services are intended to stand on their own. Regulators should be able to identify the goals they seek to achieve through existing and new regulations. Having explicit regulatory objectives ensures credibility and transparency, thus enhancing public trust as well as the confidence of those who are regulated.⁹

From the outset, the Commission has been transparent about the broad array of issues it is studying and evaluating, including those legal services developments that are viewed by some as controversial, threatening, or undesirable (e.g., alternative business structures). The adoption of this resolution does not abrogate in any manner existing ABA policy prohibiting non-lawyer ownership of law firms or the core values adopted by the House of Delegates. It also does not predetermine or even imply a position on other similar subjects. If and when any other issues come to the floor of the House of Delegates, the Association can and should have a full and informed debate about them.

The Commission intends for these Model Regulatory Objectives for the Provision of Legal Services

Joshua Kubicki, 2013 was a Big Year for Legal Startups; 2014 Could Be Bigger, TechCo (Feb. 14, 2015), available at http://tech.co/2013-big-year-legal-startups-2014-bigger-2014-02.

⁵ https://angel.co/legal

For example, in Arizona "the stated objectives of disciplinary proceedings are: (1) maintenance of the integrity of the profession in the eyes of the public, (2) protection of the public from unethical or incompetent lawyers, and (3) deterrence of other lawyers from engaging in illegal or unprofessional conduct." In re Murray, 159 Ariz. 280, 282, 767 P.2d 1, 3 (1988). In addition, the Court views "discipline as assisting, if possible, in the rehabilitation of an errant lawyer." In re Hoover, 155 Ariz. 192, 197, 745 P.2d 939, 944 (1987). California Business & Professions Code Section 6001.1 states that "[T]he protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) adopted the following: "The mission of the ARDC is to promote and protect the integrity of the legal profession, at the direction of the Supreme Court, through attorney registration, education, investigation, prosecution and remedial action."

A Supreme Court of Colorado Advisory Committee is currently developing, for adoption by the Court, "Regulatory Objectives of the Supreme Court of Colorado."

⁸ For a more extensive history of the "regulatory objectives movement," see Laurel Terry, *Why Your Jurisdiction Should Jump on the Regulatory Objectives Bandwagon*, The Professional Lawyer (2013), *available at* http://www.americanbar.org/content/dam/aba/publications/professional_lawyer/vol_22_no_1/ABA_PLN_v022n01_002_why_your_jurisdiction_should_consider_jumping_on_the_regulatory_objectives_bandwagon.authcheckdam.pdf, *archived at* (https://perma.cc/ZE8J-3V9H).

⁹ As Professor Laurel Terry states in comments she submitted in response to the Commission's circulation of a draft of these Regulatory Objectives, if "a regulator can say what it is trying to achieve, its response to a particular issue – whatever that response is – should be more thoughtful and should have more credibility. It seems to me that this is in everyone's interest."

to be used by supreme courts and their regulatory agencies. As noted in the Further Resolved Clause of this Resolution, the Objectives are offered as a guide to supreme courts. They can serve as such for new regulations and the interpretation of existing regulations, even in the absence of formal adoption. As with any ABA model, a supreme court may choose which, if any, provisions to be guided by, and which, if any, to adopt.

Although regulatory objectives have been adopted by legislatures of other countries due to the manner in which their governments operate, they are equally useful in the context of the judicially-based system of legal services regulation in the U.S., which has been long supported by the ABA.

Regulatory objectives can serve a purpose that is similar to the Preamble to the Model Rules of Professional Conduct. In jurisdictions that have formally adopted the Preamble, the Rules provide mandatory authority, and the Preamble offers guidance regarding the foundation of the black letter law and the context within which the Rules operate. In much the same way, regulatory objectives are intended to offer guidance to U.S. jurisdictions with regard to the foundation of existing legal services regulations (e.g., unauthorized practice restrictions) and the purpose of and context within which any new regulations should be developed and enforced in the legal services context.

Relationship to the Legal Profession's Core Values

Regulatory objectives are different from the legal profession's core values in at least two respects. First, the core values of the legal profession are (as the name suggests) directed at the "legal profession." By contrast, regulatory objectives are

intended to guide the creation and interpretation of a wider array of legal services regulations, such as regulations covering new categories of legal services providers. For this reason, some duties that already exist in the Model Rules of Professional Conduct (e.g., the duty of confidentiality) are restated in the Model Regulatory Objectives for the Provision of Legal Services to emphasize their importance and relevance when developing regulations for legal services providers who are not lawyers. Second, while the core values of the legal profession remain at the center of attorney conduct rules, they offer only limited, though still essential, guidance in the context of regulating the legal profession. A more complete set of regulatory objectives can offer U.S. jurisdictions clearer regulatory guidance than the core values typically provide.11

The differing functions served by regulatory objectives and core values mean that some core values are articulated differently in the context of regulatory objectives. For example, the concept of client loyalty is an oft-stated and important core value, but in the context of regulatory objectives, client loyalty is expressed in more specific and concrete terms through independence of professional judgment, competence, and confidentiality.

Further, the Commission recognizes that, in addition to civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct, advancement of appropriate preventive or wellness programs for providers

See ABA House of Delegates Recommendation 10F (adopted July 11, 2000), available at http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/mdprecom10f.html. This recommendation lists the following as among the core values of the legal profession: the lawyer's duty of undivided loyalty to the client; the lawyer's duty competently to exercise

independent legal judgment for the benefit of the client; the lawyer's duty to hold client confidences inviolate; the lawyer's duty to avoid conflicts of interest with the client; the lawyer's duty to help maintain a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibilities for the quality of justice; and the lawyer's duty to promote access to justice.

The Commission notes that there also are important professionalism values to which all legal services providers should aspire. Some aspects of professionalism fold into the Objectives related to ethical delivery of services, independence of professional judgment and access to justice. Others may not fit neatly into the distinct purpose of regulatory objectives for legal services providers, just as they do not fall within the mandate of the ethics rules for lawyers,

of legal services is important. Such programs not only help improve service as well as providers' well-being, but they also assist providers in avoiding actions that could lead to civil claims or disciplinary matters.

Recommended ABA Model Regulatory Objectives for the Provision of Legal Services

The Commission developed the Model Regulatory Objectives for the Provision of Legal Services by drawing on the expertise of its own members, 12 discussing multiple drafts of regulatory objectives at Commission meetings, reviewing regulatory objectives in nearly two dozen jurisdictions, and reading the work of several scholars and resource experts. 13 The Commission also sought input and incorporated suggestions from individuals and other entities, including the ABA Standing Committee on Professional Discipline and the ABA Standing Committee on Ethics and Professional Responsibility.

Respectfully submitted,

Judy Perry Martinez, Chair Andrew Perlman, Vice-Chair Commission on the Future of Legal Services February 2016

¹² The Commission includes representatives from the judiciary and regulatory bodies, academics, and practitioners.

¹³ Materials reviewed include Steve Mark, Tahlia Gordon, Marlene LeBrun & Gary Tamsitt, Preserving the Ethics and Integrity of the Legal Profession in an Evolving Market: A Comparative Regulatory Response, available at http://www.olsc.nsw.gov.au/Documents/preserving%20 ethics%20integrity%20legal%20profession%20uk_paper. pdf; Andrew Perlman, Towards the Law of Legal Services (2015), available at http://papers.ssrn.com/sol3/papers. cfm?abstract_id=2561014; Laurel Terry, Steve Mark &Tahlia Gordon, Adopting Regulatory Objectives for the Legal Profession, 80 Fordham Law Review 2685, 2686 (2012), available at http://papers.ssrn.com/sol3/papers. cfm?abstract_id=2085003; The Law Society, The Ministry of Justice's Call for Evidence on the Regulation of Legal Services in England and Wales: The Law Society's Response (Sept. 2, 2013), available at https://www.lawsociety.org.uk/ policy-campaigns/consultation-responses/regulation-oflegal-services/.

APPENDIX 2. COMMISSION WORK PLAN AND METHODOLOGY

1. Working Groups

The Commission organized its efforts around a number of different subject areas and engaged in extensive study and fact-finding before developing recommendations. Shortly after its creation, the Commission arranged itself into six working groups:

- DATA ON LEGAL SERVICES DELIVERY. This
 working group has assessed the availability
 of current, reliable data on the delivery of
 legal services, such as data on the public's
 legal needs, the extent to which those needs
 are being addressed, and the ways in which
 legal and law-related services are being delivered; identified areas where additional data
 would be useful; and considered ways to
 make existing data more readily accessible to
 practitioners, regulators, and the public.
- DISPUTE RESOLUTION. This working group has assessed innovations in dispute resolution. Examples include innovations in: (a) court processes, such as streamlined procedures for more efficient dispute resolution, the creation of family, drug and other specialized courts, the availability of online filing and video appearances, and the effective and efficient use of interpreters; (b) delivery mechanisms, such as kiosks and court information centers; (c) criminal justice, such as veterans' courts and cross-innovations in dispute resolution between civil and criminal courts; (d) alternative dispute resolution, including online dispute resolution services; and (e) administrative and related tribunals.
- PREVENTIVE LAW, TRANSACTIONS, AND OTH-ER LAW-RELATED COUNSELING. This working group has assessed innovations in the delivery of legal and law-related services that do

- not involve courts or other forms of dispute resolution, such as contract drafting, wills, trademarks, and incorporation of businesses.
- ACCESS SOLUTIONS FOR THE UNDERSERVED.
 This working group has assessed innovations that facilitate access to legal services for underserved communities.
- BLUE SKY. This working group has assessed innovations that do not necessarily fit within the other working groups, but could improve how legal services are delivered and accessed, such as innovations developed in other professions to improve effectiveness and efficiency, collaborations with other professions, and leveraging technology to improve the public's access to law-related information.
- REGULATORY OPPORTUNITIES. This working group studied existing regulatory innovations, assessing developments in this area, and recommending regulatory innovations most likely to improve the delivery of, and the public's access to, competent and affordable legal services.

The Working Groups met regularly, either in-person or via teleconference. Each group gathered and assessed relevant literature on challenges and opportunities; engaged with members of the bar, ABA entities, and the public; read comments submitted to the Commission in response to a series of issues papers; listened to and analyzed testimony at public hearings from the bar and beyond; participated in and learned from the National Summit on Innovation in Legal Services as well as thought-leader webinars and state-based grassroots meetings and futures presentations; and developed preliminary recommendations for consideration by the full Commission.

2. Hearings

At public hearings during the American Bar Association Midyear Meeting in Houston, Texas (February 2015) and the ABA Annual Meeting in Chicago (August 2015), and at a roundtable discussion ABA Midyear meeting in San Diego (February 2016), the Commission heard from numerous individuals who represented a range of interests, including practicing lawyers, legal services providers, the judiciary, ABA entities, state bar associations, members of the public, and the Department of Justice. The testimony from the public hearings is available for public review on the Commission website, http://www.americanbar.org/groups/ centers_commissions/commission-on-the-futureof-legal-services/Testimonials.html, archived at https://perma.cc/3T6T-PR3F.

2015 ABA Annual Meeting Hearing Schedule | Chicago, IL

- Tom Bolt, Incoming Chair, ABA Law Practice Division
- Miguel Keberlein, Supervising Attorney for the Legal Assistance Foundation of Chicago's Immigration and Workers Rights Practice Group
- Christopher A. Zampogna, Immediate Past President, BADC (voluntary bar of DC)
- Charles Jones, Client, First Defense Legal Aid
- Fred Headon, Past President, Canadian Bar Association
- Bob Hirshon, Special Advisor, ABA Standing Committee on the Delivery of Legal Services
- Melissa Birks, Client, Justice Entrepreneurs Project/Chicago Bar Foundation (incubator project)
- Nichayette Vil, Client, Group and Prepaid Legal Services

- Larry Fox, Partner, Biddle & Reath, LLP;
 Crawford Lecturer, Yale Law School
- Blake Morant, President, American Association of Law Schools

2015 ABA Midyear Meeting Hearing Schedule | Houston, TX

- Chas Rampenthal, General Counsel, LegalZoom
- Alice Mine, Chair, ABA Standing Committee on Specialization
- Honorable Rick Teitelman, Supreme Court of Missouri
- Bruce Meyerson, ABA Dispute Resolution Section HOD Representative, and Nancy Greenwald, ABA Dispute Resolution Section Membership Chair
- Andrew Schpak, Chair, ABA Young Lawyers Division
- Mark Britton, CEO, Avvo, Inc.
- David English, Chair, ABA Commission on Law and Aging
- Sands McKinley, McKinley Irvin
- Honorable Scott Bales, Chief Justice, Arizona Supreme Court
- Ken Grady, CEO, SeyfarthLean Consulting
- Patricia Salkin, Dean and Professor of Law, Touro College
- Buck Lewis, Past President, Tennessee Bar Association
- Lisa Foster, Director, Access to Justice Initiative, U.S. Department of Justice
- Holly M. Riccio, President, American Association of Law Libraries

- Paris Eliades, President, New Jersey State Bar Association
- Lee Difilippo, Equal Justice Law Office
- Andrew Gresch, Slater & Gordon

- Keith McLennon, Chair, ABA Standing Committee on Group & Prepaid Legal Services, and former Chair, ABA Solo, Small Firm and General Practice Division
- Aaron Sohaski, Chair, ABA Law Student Division

3. Issues Papers and Solicitation of Comments

The Commission released the following issues papers to solicit feedback from ABA entities, practicing attorneys, legal services providers, national advocacy organizations, law professors, and individuals:

- A. Issues Paper on the Future of Legal Services, November 2014
- B. Issues Paper on New Categories of Legal Services Providers, October 2015

- C. Issues Paper on Legal Checkups, March 2016
- D. Issues Paper on Unregulated LSP Entities, March 2016
- E. Issues Paper on Alternative Business Structures, April 2016

All issues papers and submitted comments are available for review on the Commission's website.

4. Grassroots Meetings and Futures Presentations

Grassroots meetings and futures presentations were an integral component of the Commission's information gathering process. Designed as action-oriented endeavors, the ABA served as a catalyst for local conversations and innovations to create new avenues for access to legal services for all and open doors to new career opportunities for current and future lawyers. These grassroots meetings involved bar leadership, the judiciary and court personnel, local practitioners, local businesses and clients, along with innovation experts to help envision new ways to solve existing blocks to delivery of legal services in the community. Participants in each grassroots meeting were charged with identifying specific areas in their communities where innovation is needed to cultivate more effective and affordable ways to deliver legal services. To help facilitate the grassroots meetings, the Commission produced a grassroots toolkit that includes sample agendas, possible invitation lists and letters, briefing papers on issues for discussion, moderator and facilitator guides, background

and resource materials for posting to local bar websites, and data collection forms and formats.

More than 70 grassroots meetings and futures presentations have been held; a listing follows:

2014

- Grassroots Meeting, St. Louis, MO (April 21, 2014)
- Duke University School of Law (Webinar), (June 23, 2014)
- Conference of Chief Justices Annual Roundtable Discussion, White Sulphur Springs, WV (July 21, 2014)
- ABA Section Officers' Mini-Futures Conference, Chicago, IL (September 12, 2014)
- Washington State Bar Association (Webinar), (October 1, 2014)

- ABA Young Lawyers Division Fall Conference, Portland, OR (October 11, 2014)
- ABA Center for Professional Responsibility Mini-Futures Conference, Chicago, IL (October 24, 2014)
- State Bar of Michigan, The Future of Legal Services: Changes and Challenges in the Legal Profession, Lansing, MI (November 10, 2014)
- ABA Board of Governors' Program Committee Access Discussion, Charleston, SC (November 13, 2014)

2015

- Conference of Chief Justices Professionalism and Confidence of the Bar Committee, San Antonio, TX (January 26, 2015)
- ABA Board of Governors' Preventive Law Discussion, Houston, TX (February 6, 2015)
- National Conference of Bar Presidents Panel Presentation/Roundtables, Houston, TX (February 7, 2015)
- Chicago Bar Association's Futures Fair Expo, Chicago, IL (February 20, 2015)
- American College of Trial Lawyers Futures Presentation, Miami Beach, FL (February 28, 2015 - March 1, 2015)
- ABA Bar Leadership Institute, Chicago, IL (March 11, 2015)
- Sarasota Bar Association Futures Presentation, Sarasota, FL (March 26, 2015)
- New York State Bar Association Futures Presentation, Albany, NY (March 28, 2015)
- Arizona Grassroots Meeting: Future of Delivery of Legal Services in Arizona, Tempe, AZ (April 3, 2015)
- ABA Standing Committee on Public Education Futures Presentation, Chicago, IL (April 10, 2015)

- ABA Business Law Section Council Meeting Futures Presentation, San Francisco, CA (April 18, 2015)
- Ohio State Bar Association, Access to Justice Summit, Sandusky, OH (April 30, 2015)
- Beverly Hills Bar Association Futures Presentation, Beverly Hills, CA (May 1, 2015)
- State Bar of Montana Board of Trustees Annual Meeting for Long Range Planning, Fairmont, MT (May 15-16, 2015)
- ALI Annual Meeting Futures Presentation, Washington, DC (May 17-20, 2015)
- Future of the Delivery of Legal Services in North Carolina, Cary, NC (May 27, 2015)
- National Conference on Professional Responsibility Futures Presentation, Denver, CO (May 28, 2015)
- ABA Board of Governors Blue Sky Innovation Discussion, Washington, DC (June 5, 2015)
- Louisiana State Bar Association Futures Presentation, Sandestin, FL (June 8, 2015)
- Annual Florida Bar Convocation Futures Presentation, Boca Raton, FL (June 23, 2015)
- Collaborative Bar Leadership Academy Futures Presentation, Minneapolis, MN (June 25-27, 2015)
- Australian Bar Association Conference Futures Presentation, Boston, MA (July 8, 2015)
- Conference of Chief Justices Professionalism and Confidence of the Bar Committee, Omaha, NE, (July 27, 2015)
- National Organization of Bar Counsel Futures Presentation, Chicago, IL (July 30, 2015)
- Fifth Annual Forum on Judicial Independence: Courts As Leaders Learning from Ferguson, Chicago, IL (July 31, 2015)
- National Conference of Bar Presidents Futures Presentation, Chicago, IL (August 1, 2015)

- National Conference on Client-centric Legal Services Futures Presentation, Denver, CO (August 14-15, 2015)
- Ohio State Judicial Conference Futures Presentation, Columbus, OH (September 3, 2015)
- ABA Diversity Center Meeting Futures Presentation, Chicago, IL (September 19, 2015)
- USDC Northern District of Oregon Federal Judges Futures Presentation, Portland, OR (October 2, 2015)
- New England Bar Association Panel Discussion, Newport, RI (October 2-3, 2015)
- Missouri Bar/Missouri Judicial Conference Panel Discussion, St. Louis, MO (October 8, 2015)
- College of Law Practice Management Futures Conference, Chicago, IL (October 8-9, 2015)
- ABA Section of International Law Panel Discussion, Montreal, Canada (October 21, 2015)
- ABA Center for Professional Responsibility
 Fall Leadership Conference Futures Presentation, Chicago, IL (October 23, 2015)

- State Bar of Michigan Annual Justice Initiatives Summit Futures Presentation, Lansing, MI (October 28, 2015)
- National Asian Pacific American Bar Association Board of Governors Meeting, New Orleans, LA (November 4, 2015)
- NLADA Annual Meeting Futures Presentation, New Orleans, LA (November 4-7, 2015)
- New Jersey State Bar Association Board of Trustees Meeting, New Orleans, LA (November 5, 2015)
- Making Justice Accessible Symposium -American Academy of Arts and Sciences, Somerville, MA (November 11-12, 2015)
- National Association of Bar Executives' State Regulatory Workshop Futures Presentation, Portland, OR (November 12, 2015)
- ABA Standing Committee on Bar Activities and Services Regulatory Issues Presentation, Chicago, IL (November 14, 2015)
- North Carolina Commission on the Administration of Law and Justice Futures Presentation, Raleigh, NC (December 1, 2015)

2016

- AALS Annual Meeting Futures Presentation, New York, NY (January 6-10, 2016)
- Winter Bench Bar Meeting of the Washington County Bar Association Futures Presentation, Canonsburg, PA (January 22, 2016)
- Conference of Chief Justices Professionalism Committee Presentation, Monterey, CA (February 1, 2016)
- ABA Judicial Division Lawyers Conference and National Conference of Administrative Law Judges Futures Presentation, San Diego, CA (February 5, 2016)
- National Conference of Bar Presidents Futures Panel Discussion/Regulatory Issues, San Diego, CA (February 6, 2016)

- Louisiana State Bar, New Orleans, LA (February 25-26, 2016)
- New Hampshire Bar Association's Midyear Meeting, Manchester, NH (March 4, 2016)
- ABA Tech Show, Chicago, IL (March 17-18, 2016)
- Western States Bar Conference Futures Program, San Diego, CA (March 31, 2016)
- The Future is Now Legal Services 2016 Conference, Illinois Supreme Court Commission on Professionalism, Chicago, IL (April 6, 2016)
- Maryland State Bar Association's Planning Conference - Futures Presentation, Columbia, MD (April 8, 2016)

- ABA Section of International Law Spring Meeting Futures Panel Discussion, New York, NY (April 12-15, 2016)
- 2016 National Conference of Bar Examiners Bar Admissions Conference - Futures Presentation, Washington, DC (April 15-16, 2016)
- ABA Standing Committee on Public Education Meeting, Chicago, IL (April 15-16, 2016)
- National Conference on Professional Responsibility Futures Presentation, Philadelphia, PA (June 3, 2016)

 Alabama State Bar Futures Presentation, Sandestin, FL (June 24, 2016)

In addition to participating in the grassroots meetings across the country, the chair, vice chair, and other commissioners appeared before over 35 ABA entities at the Houston 2015 Midyear Meeting, over 50 entities at the Chicago 2015 Annual Meeting, and over 75 entities at the San Diego 2016 Midyear Meeting.

5. Commission Webinars

The Commission sponsored monthly webinars on topics relevant to the Commission's mission for both members of the Commission and the ABA Board of Governors. The webinar topics have included:

- The Emerging Legal Ecosystem (Professor William Henderson, Indiana Law);
- Multi-pathing the Delivery of Legal Services for the 79% (Will Hornsby, ABA);
- 21st Century Technology and 19th Century Law Practice: The Coming Clash (Michael Mills, Neota Logic);
- A Conversation on the Task Force to Expand Access to Civil Service in New York (Helaine

Barnett, Chair of the NY Permanent Commission on Access to Justice, and Chief Judge Jonathan Lippman);

- It's the Client, Stupid (Susan Hackett, Executive Leadership, LLC);
- Innovation in Legal Education (Dean Dan Rodriguez, Northwestern Law);
- A2J Author and the Future of the Delivery of Legal Services (John Mayer, CALI);
- Regulating the Future Delivery of Legal Services (Professor Gillian Hadfield, USC Law, and Larry Fox, Drinker Biddle & Reath).

Recordings of webinars are publicly available on the Commission's website.

6. Communications

The Commission maintains a public **website** that serves to enhance communication with ABA membership and the public about the Commission's work and that provides a source of information about the future of legal services. This information includes the grassroots toolkit for bar

associations, documents related to the Commission's work, comments received by the Commission, and links to view recordings of Commission hearings, the National Summit on Innovation in Legal Services, and webinars.

7. Commission White Papers

The Commission sought to compile relevant, existing data on the delivery of legal services and to make this information more readily accessible to practitioners, regulators, and the public, while at the same time identifying new areas for study. To this end, the Commission oversaw the creation of sixteen white papers authored by leading scholars and experts on the future of legal services, published in Volume 67 of the South Carolina Law Review, Winter 2016. The white papers are listed below, and can be accessed in full on the Commission's website.³⁷⁷ Collectively, these papers identify a futures research agenda to further expand access to and the delivery of legal services in the 21st century.

- William C. Hubbard & Judy Perry Martinez; Foreword
- Elizabeth Chambliss, Renee Newman Knake,
 & Robert L. Nelson; Introduction: What We
 Know and Need to Know About the State of "Access to Justice" Research
- Raymond Brescia; What We Know and Need to Know About Disruptive Innovation
- Tonya Brito, David J. Pate, Daanika Gordon,
 & Amanda Ward; What We Know and Need to
 Know About Civil Gideon
- Deborah Thompson Eisenberg; What We Know and Need to Know About Alternative Dispute Resolution
- April Faith Slaker; What We Know and Need to Know About Pro Bono Legal Services

- D. James Greiner; What We Know and Need to Know About Intake by Legal Services Providers
- Elinor R. Jordan; What We Know and Need to Know About Immigration and Access to Justice
- Ethan Katsh & Colin Rule; What We Know and Need to Know About Online Dispute Resolution
- Stephanie Kimbro; What We Know and Need to Know About Gamification Online Engagement
- Bharath Krishnamurthy, Sharena Hagins, Ellen Lawton, & Megan Sandel; What We Know and Need to Know About Medical-Legal Partnerships
- Daniel W. Linna, Jr.; What We Know and Need to Know About Legal Startups
- Paul Lippe; What We Know and Need to Know About Watson, Esq.
- Deborah L. Rhode; What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers
- Rebecca L. Sandefur; What We Know and Need to Know About Community Legal Needs
- Carole Silver; What We Know and Need to Know About Global Lawyer Regulation
- Silvia Hodges Silverstein; What We Know and Need to Know About Legal Procurement
- John Christian Waites & Fred Rooney; What We Know and Need to Know About Law School Incubators

8. Additional Resources

As the Commission conducted grassroots meetings and futures presentations across the country, held hearings, and received public comments, numerous already-existing innovations designed to enhance access to legal services were identified. These innovations are inventoried on the Commission's website. The Commission also

conducted a study in partnership with the National Center for State Courts that included a public opinion survey and two focus groups to better understand the public's perception about access to and the delivery of legal services. A synopsis of the study is available on the Commission's website.

APPENDIX 3. NATIONAL SUMMIT ON INNOVATION IN LEGAL SERVICES

he National Summit on Innovation in Legal Services was convened in partnership with Stanford Law School on May 2-4, 2015. The purpose of the Summit was to challenge thought-leaders from within and outside the legal profession to develop action plans for ensuring access to justice for all. The more than 200 invited attendees included more than a dozen chief justices of state supreme courts, members of the state and federal bench, as well as bar leaders, lawyers from diverse practice settings, innovators, academics, non-governmental organization leaders, new entrants in legal services, and law students. Significantly, many attendees were experts and activists from diverse fields outside of the legal profession including medicine, engineering and information technology. Many of the attendees were chosen to speak on various topics at the Summit about the public's need for legal services

ranging from the current state of access to justice issues in the United States, innovation, legal education, and overall regulatory reform.

During the Summit, teams of participants broke out into different groups to discuss challenges facing access to legal services, resources, consumer knowledge, complexity of law, technology, fear of change, implementation, and education of the public. The breakout teams were split into different topics: access solutions for the underserved, blue sky innovation, dispute resolution, preventive law, and regulatory opportunities. Each team identified the challenges and brainstormed potential opportunities for enhancing access to and the delivery of legal services as summarized below. The Commission did not take a formal position on the ideas presented unless otherwise noted.

Summary of Overall Challenges Identified

- 1. Meaningful access (language, geography, time, client capacity)
- Resources (lack of data on legal needs/quality metrics/etc.; insufficient funding)
- Consumer knowledge/outreach (identifying lawyers as solution to problems; quality control)
- Unnecessary complexity of law (law-thick world; lawyer language not people language)

- 5. Technology (adoption, understanding, trust)
- 6. Fear of change
- 7. Implementation (buy-in by the profession and the public)
- 8. Education of public

Summary of Potential Opportunities

Access Solutions for the Underserved

- Community based legal resource centers (libraries, retail, etc. during night/weekend hours)
- Standardized legal forms across all jurisdictions
- 3. Increased government funding for court technology
- Triage via an online portal that allows people to pose a question and figure out if it's a legal issue or not (trained social worker answering questions)
- 5. Pop-up devices/advertisements online
- Develop open platform for app development to serve legal needs
- 7. Legal insurance
- 8. Faith-based initiatives
- 9. Online dispute resolution
- Uniform, nation-wide hotline that supports crisis management/triage and provides referrals
- 11. Incubator programs for new attorneys
- "Participatory Defense"—support for defendant families to help defense lawyer (almost become a part of the defense)
- 13. Mandatory pro bono or CLE credit for pro bono
- 14. Improved E-filing system
- 15. Gamification

Blue Sky Innovations

- 1. Civil Gideon
- ABA Technology Innovation Grants (creating a venture fund to fuel innovation projects)
- 3. Universal online legal triage platform

- 4. Online clearinghouse for legal innovation ideas
- 5. Specialized court dockets
- Future of Legal Services taught in all law schools
- 7. Public private partnerships (e.g. revamp PACER)
- Limit unauthorized practice of law enforcement
- 9. Visual maps for law
- 10. Informal dispute resolution
- 11. Mobile technology for legal services

Dispute Resolution

- 1. Multilanguage online forms; unbundled services
- 2. Digitized documents at creation (including court opinions)
- Online dispute resolution model outside of court system as first step
- 4. Judge White's apprenticeship program
- Expedited proceedings for disputes under \$100k
- 6. Online legal help
- 7. Civics education
- 8. Courthouse kiosks; video/remote courts

Preventive Law

- 1. Broader range of legal services providers
- 2. ABS-type model, with client-focused delivery
- Permit nonlawyers but hold to same standards
- 4. Bar associations increase marketing and education of consumers
- 5. Co-locate services with libraries, senior centers, churches, medicine

- 6. Help profession identify multidisciplinary experts needed to design/implement tech solutions
- 7. Expand law school curriculum to include other disciplines
- 8. Annual legal checkups

Regulatory Opportunities

- Liberalize lawyer regulation to permit equity sharing with nonlawyers to compensate/ incentivize tech and innovation
- 2. Permit fee splitting to allow for innovative revenue sharing and lead generation
- 3. Permit LLLT-type programs

- 4. Permit practice across jurisdictions, especially for pro bono, etc.
- Liberalize advertising rules for innovative delivery and marketing
- 6. Implement outcome based regulation with consumer protection focus
- 7. Assure adequate funding for regulatory bodies
- 8. Uniform bar exam
- 9. Regulatory guidelines/objectives for jurisdictions to follow as they experiment
- Consider 2-year legal education with thirdyear apprenticeship (CLE for practicing attorneys)

Additional information about the Summit, including the full agenda and list of speakers, can be found on the Commission's website.

APPENDIX 4. STATE AND LOCAL BAR ASSOCIATION WORK ON ACCESS TO JUSTICE AND THE FUTURE OF LEGAL SERVICES

he Commission commends the tremendous work by state and local bar associations on access to justice and the future of legal services. Listed below are many examples of these efforts, and the Commission encourages similar endeavors in the future.

- Alabama Access to Justice Commission, 2003 http://www.alabamaatj.org/, archived at https://perma.cc/K836-LTWZ
- Alabama State Bar Future of the Profession in Alabama Task Force https://www.alabar.org/membership/ committees/fpa/, archived at https://perma.cc/ BAL9-JP92
- Alaska Fairness and Access Commission http://www.national-consortium.org/~/media/ Microsites/Files/National%20Consortium/ Conferences/2015/State%20Reports/State%20 Report%20Alaska%202015.ashx, archived at https://perma.cc/4JD7-87LQ
- Arizona Commission on Access to Justice, 2014 http://www.azcourts.gov/cscommittees/ Arizona-Commission-on-Access-to-Justice,

archived at https://perma.cc/WJ69-WLHB

- Arkansas Access to Justice Commission, 2003 http://www.arkansasjustice.org/, archived at https://perma.cc/YZH6-8JY8
- Boston Task Force on the Future of the Profession – Final Report http://www.bostonbar.org/docs/defaultdocument-library/future-of-prof-task-force. pdf, archived at https://perma.cc/7CYG-SDZK

- California Commission on Access to Justice, 1996 http://cc.calbar.ca.gov/Committees
 Commissions/Special/AccesstoJustice.aspx, archived at https://perma.cc/Y77T-8YZT
- Colorado Access to Justice Commission, 2003 http://www.cobar.org/For-Members/Accessto-Justice-Commission, archived at https://perma.cc/MY62-MPHT
- Connecticut Judicial Branch Access to Justice Commission, 2011 http://www.jud.ct.gov/committees/access/, archived at https://perma.cc/B52P-8HMQ
- Delaware Access to Justice Commission, 2014 http://courts.delaware.gov/supreme/access. aspx, archived at https://perma.cc/Y6W8-V78H
- District of Columbia Access to Justice Commission, 2005 http://www.dcaccesstojustice.org/, archived at https://perma.cc/Z6GB-SLXL
- Florida Commission on Access to Civil Justice http://devlamp2.flabar.org/wordpress/ flaccesstojustice/, archived at https://perma. cc/7TBS-XXFS
- Georgia Access to Justice, Standing Committee https://www.gabar.org/ committeesprogramssections/committees/, archived at https://perma.cc/8HL8-V9P2
- Hawaii Access to Justice Commission http://www.hawaiijustice.org/hawaiiaccess-to-justice-commission, archived at https://perma.cc/53R3-W5AF
- Idaho Access to Justice Campaign
 https://isb.idaho.gov/ilf/aji_campaign/aji.
 html, archived at https://perma.cc/R5B2-3B3Y

- Illinois Supreme Court Access to Justice Commission, 2012 http://www.illinoiscourts.gov/supremecourt/
 - Committees/Commn_on_Access_to_Justice. asp, archived at https://perma.cc/5YDR-PVJP
- Illinois State Bar Task Force on the Future of Legal Services, 2014 https://www.isba.org/committees/ taskforcefuturelegalservices, archived at https://perma.cc/UNM5-A2Y9
- Indiana Commission to Expand Access to Civil Legal Services, 2013 http://www.americanbar.org/content/dam/ aba/administrative/legal_aid_indigent_ defendants/ls_sclaid_atj_in_5_final_plan. authcheckdam.pdf, archived at https://perma. cc/EG2L-9UZX
- Indiana State Bar Future of the Provision of Legal Services Committee, 2016 http://www.inbar.org/members/group. aspx?id=161240, archived at https://perma. cc/59MM-Q4XC
- Iowa Access to Justice Committee
 http://www.iowabar.org/Login.aspx, archived
 at https://perma.cc/B5UX-Z5ZJ
- Kansas Supreme Court Access to Justice Committee, 2010 http://www.kscourts.org/Rules/Rule-Info. asp?r1=Rule+Relating+to+Access+to+ Justice+Committee&r2=413, archived at https://perma.cc/P6WH-MKFY
- Kentucky Access to Justice Commission, 2010 http://courts.ky.gov/ commissionscommittees/KAJC/Pages/ default.aspx, archived at https://perma.cc/ AB6P-M8YZ
- Louisiana Access to Justice Commission, 2015 https://www.lsba.org/ATJ/, archived at https:// perma.cc/TC4X-BQW3
- Maine Justice Action Group, 1995
- Maryland Access to Justice Commission, 2008 http://www.mdcourts.gov/mdatjc/, archived at https://perma.cc/N7FE-KFFG

- Massachusetts Access to Justice Commission, 2004
 - http://www.massa2j.org/a2jwp/, archived at https://perma.cc/6JWF-TSFL
- 21st Century Law Practice Task Force, State Bar of Michigan, 2015 http://www.michbar.org/generalinfo/ futurelaw, archived at https://perma.cc/6BF3-CPF7
- Legal Assistance to the Disadvantaged Committee
 - http://www.mnbar.org/members/committees -sections/msba-committees/legal-assistance -to-the-disadvantaged#.Vpxg0_krLIU, archived at https://perma.cc/GN2B-5DUH
- Mississippi Access to Justice Commission, 2006 http://www.msatjc.org/, archived at https:// perma.cc/C4YS-ZJ74
- Missouri Legal Services Commission, 2000
- Montana Access to Justice Commission, 2012 http://courts.mt.gov/supreme/boards/a2j, archived at https://perma.cc/A4LN-BWTB
- Nebraska Equal Access to Justice Committee, 2002
- Nevada Access to Justice Commission, 2006 http://www.nvbar.org/atj, archived at https:// perma.cc/HR27-CD3B
- New Hampshire Access to Justice Commission, 2007 http://www.courts.state.nh.us/access/, archived at https://perma.cc/GQ7T-9ZXU
- New Mexico Commission on Access to Justice, 2006 https://www.nmcourts.gov/newface/ access2justice/index.html, archived at https:// perma.cc/8LNJ-XNAM
- New York Permanent Commission on Access to Justice, 2010 https://www.nycourts.gov/ accesstojusticecommission/index.shtml, archived at https://perma.cc/H83K-2DD5

 New York State Courts Access to Justice Program

http://www.nycourts.gov/ip/nya2j/, archived at https://perma.cc/G5ZC-XYHW

- North Carolina Equal Access to Justice Commission, 2005 http://ncequalaccesstojustice.org/, archived at https://perma.cc/B8F7-S7HA
- North Dakota Access to Justice Commission https://www.ndcourts.gov/court/committees/ access_justice/committee.asp, archived at https://perma.cc/JP4L-VKWJ
- Ohio Task Force on Access to Justice https://www.supremecourt.ohio.gov/Boards/ accessJustice/default.asp, archived at https:// perma.cc/7D5J-9SSF
- Oklahoma Access to Justice Commission, 2014
 http://www.probono.net/ok/pb_projects/ item.2520-Oklahoma_Access_to_Justice_ Commission, archived at https://perma.cc/ CK2C-QXG5
- Oregon Access to Justice for All Committee http://courts.oregon.gov/OJD/OSCA/cpsd/ courtimprovement/access/Pages/index.aspx, archived at https://perma.cc/77RC-7SXU
- Pennsylvania Access to Justice Committee http://www.pabar.org/public/committees/ lspublic/atj/accesstojustice.asp, archived at https://perma.cc/NW67-XXQZ
- Puerto Rico Advisory Commission for Access to Justice, 2014
 http://www.americanbar.org/content/dam/ aba/administrative/legal_aid_indigent_ defendants/ATJReports/ls_ATJPuertoRico_ CreationOrder.authcheckdam.pdf, archived at https://perma.cc/4U9Z-W986
- South Carolina Access to Justice Commission, 2007

http://www.scatj.org/, archived at https://perma.cc/DW64-T2KN

- Tennessee Access to Justice Commission, 2009
 - https://www.tncourts.gov/programs/ access-justice/access-justice-commission-0, archived at https://perma.cc/S24L-NL7A
- Texas Access to Justice Commission, 2001 http://www.texasatj.org/, archived at https:// perma.cc/5PLE-LR4A
- Texas Commission to Expand Civil Legal Services, 2016 http://www.txcourts.gov/supreme/news/ justice-gap-commission.aspx, archived at https://perma.cc/K2NY-BW78
- Futures Commission of the Utah State Bar http://www.utahbar.org/members/futures/, archived at https://perma.cc/89SQ-BZXT
- Vermont Access to Justice Coalition, 2004 http://voicesforciviljustice.org/?p=8241, archived at https://perma.cc/J3FL-4EZE
- Virginia Access to Justice Commission, 2013 http://www.courts.state.va.us/programs/ vajc/home.html, archived at https://perma. cc/3BDN-6JHQ
- Washington State Access to Justice Board, 1994
 http://www.wsba.org/Legal-Community/ Committees-Boards-and-Other-Groups/ Access-to-Justice-Board, archived at https:// perma.cc/9NBG-8KKH
- West Virginia Access to Justice Commission, 2009 http://www.courtswv.gov/courtadministration/access-to-justice.html, archived at https://perma.cc/KY5G-LG6U
- Wisconsin Access to Justice, 2009
 http://wisatj.org/, archived at https://perma.cc/CHU6-WBWE
- Wyoming Access to Justice Commission, 2008 https://perma-archives.org/warc/NM6B-Z8BK/http://www.courts.state.wy.us/ BoardCom/AJC, archived at https://perma.cc/ NM6B-Z8BK

APPENDIX 5. JOINT STATEMENT BY WILLIAM C. HUBBARD AND SHERRILYN IFILL

n July 2015, then-ABA President William C.
Hubbard and NAACP Legal Defense and Educational Fund President and Director-Counsel Sherrilyn Ifill issued a joint statement in which they recommended that several additional actions be taken:

- 1. Better data on the variety of interactions between law enforcement and citizens must be collected and maintained. Earlier this year FBI Director James Comey - himself a former federal prosecutor - acknowledged that gathering better and more reliable data about encounters between the police and citizens is "the first step to understanding what is really going on in our communities and our country." Data related to violent encounters is particularly important. As Director Comey remarked, "It's ridiculous that I can't know how many people were shot by police." Police departments should be encouraged to make and keep reports on the racial identities of individuals stopped and frisked, arrested, ticketed or warned for automobile and other infractions. Police departments should report incidents in which serious or deadly force is used by officers and include the race of the officer(s) and that of the civilian(s). This will certainly require investment of funds, but that investment is key to a better future. It is difficult to understand what is not measured, and it is even more difficult to change what is not understood.
- Prosecutors should collect and publicly disclose more data about their work that can enable the public to obtain a better understanding of the extent to which racial disparities arise from the exercise of prosecutorial discretion. While this data

- collection also will require investment of funds, it is essential to achieving the goal of eliminating racial bias in the criminal justice system.
- Prosecutors and police should seek assistance from organizations with expertise in conducting objective analyses to identify and localize unexplained racial disparities.
 These and similar organizations can provide evidence-based analyses and propose protocols to address any identified racial disparities.
- 4. Prosecutors' offices, defense counsel and judges should seek expert assistance to implement training on implicit bias for their employees. An understanding of the science of implicit bias will pave the way for law enforcement officers, prosecutors and judges to address it in their individual work. There should also be post-training evaluations to determine the effectiveness of the training.
- 5. Prosecutors' offices must move quickly, aggressively, unequivocally and yet deliberately to address misconduct that reflects explicit racial bias. Such conduct is fundamentally incompatible with our shared values and it has an outsized impact on the public's perception of the fairness of the system.
- 6. Prosecutors' offices and law enforcement agencies should make efforts to hire and retain lawyers and officers who live in and reflect the communities they serve. Prosecutors and police should be encouraged to engage with the community by participating in community forums, civic group meetings and neighborhood events. Prosecutors'

- offices should build relationships with African-American and minority communities to improve their understanding about how and why these communities may view events differently from prosecutors.
- 7. There should be a dialogue among all the stakeholders in each jurisdiction about race and how it affects criminal justice decision-making. In 2004, the ABA Justice Kennedy Commission recommended the formation of Racial Justice Task Forces which would consist of representatives of the judiciary, law enforcement and prosecutors, defenders and defense counsel, probation and parole officers and community organizations - to examine the racial impact that policing priorities and prosecutorial and judicial decisions might produce and whether alternative approaches that do not produce racial disparities might be implemented without compromising public safety. There is little cost associated with the assembly of such task forces, and they can develop solutions that could be applicable to a variety of jurisdictions provided that the various stakeholders are willing to do the hard work of talking honestly and candidly about race.
- As surprising as it may seem, many people do not understand what prosecutors do. Hence, prosecutors' offices, with the help of local and state bar associations, should seek out opportunities to explain their function and the kinds of decisions they are routinely called upon to make. Local and state bar associations and other community organizations should help to educate the public that the decision not to prosecute is often as important as the decision to prosecute; that prosecutors today should not be judged solely by conviction rates but, instead, by the fairness and judgment reflected in their decisions and by their success in making communities safer for all their members; and that some of the most innovative alternatives to traditional prosecution and punishment - like

- diversion and re-entry programs, drug and veteran courts and drug treatment have been instigated, developed and supported by prosecutors.
- 9. To ensure accountability, the public should have access to evidence explaining why grand juries issued "no true bills" and why prosecutors declined to prosecute police officers involved in fatal shootings of unarmed civilians. The release of grand jury evidence, as in Ferguson, is one way to promote the needed accountability.
- 10. Accountability can also be promoted by greater use of body and vehicle cameras to create an actual record of police-citizen encounters. With the proliferation of powerful firearms in our communities, law enforcement departments reasonably seek equipment that enable them to protect themselves and their communities when called upon to confront armed and dangerous individuals seeking to engage in criminal or terrorist acts. However, while it is appropriate to arm our police and train them in the use of ever-more powerful weapons, it is equally important to train our law enforcement officers in techniques designed to de-escalate tense situations, make accurate judgments about when use of force is essential and properly determine the appropriate amount of force required in each situation.
- 11. We must recognize that not every lawyer has the judgment and personal qualities to be a successful prosecutor, administer justice and be willing to acknowledge the possibility of implicit bias. Prosecutors who routinely engage in conduct or make decisions that call into question the fairness or integrity of their offices should be removed from office if they cannot be trained to meet the high standards expected of public officers. At the same time, the terms "prosecutorial misconduct" and "police misconduct" should be used with greater care. Even the best prosecutors will make mistakes, much like the best defense lawyers and judges do.

- There is good reason to limit the characterization of "misconduct" to intentional acts that violate legal or ethical rules.
- 12. Prosecutors, judges and defense counsel must pay more attention to the collateral consequences of convictions. In many jurisdictions, after an individual is convicted of an offense and completes his or her sentence (by serving time, paying a fine or completing probation or parole), the individual nevertheless faces a life sentence of disqualification and deprivation of educational, employment, housing and other opportunities. This runs counter to the interests we all share in rehabilitation of the offender and positive re-integration into

and engagement with the communities in which they live. In many cases, prosecutions can be structured to limit some of the most pernicious of these consequences, provided that the lawyers and the courts take the time and care to examine alternative disposition options. Prosecutors, judges and defense counsel should join together to urge legislatures and administrative agencies to reconsider the laws and regulations that impose these collateral consequences and determine whether they can be modified to provide more opportunities for former offenders without compromising public safety.³⁷⁸

CITATIONS

Endnotes

- See Commission on the Future of Legal Services, American Bar Association, available at http://www.americanbar.org/ groups/centers_commissions/commission-on-the-futureof-legal-services.html, archived at (https://perma.cc/9JT7-JURD).
- ² See William C. Hubbard, Embracing Innovation to Expand Access to Civil Justice, American Bar Association, available at http://www.americanbar.org/publications/judges_ journal/2015/winter/embracing_innovation_to_expand_ access_to_civil_justice.html, archived at (https://perma.cc/ EQ64-9CYP).
- What We Know and Need to Know About the Future of Legal Services: White Papers for the ABA Commission on the Future of Legal Services, 67 S.C. L. Rev. 2 (Winter 2016), available at http://www.americanbar.org/groups/ centers_commissions/commission-on-the-future-of-legalservices/whitepapers.html, archived at (https://perma. cc/9RTT-BHAN).
- See Commission on the Future of Legal Services, supra note 1.
- ⁵ See FY 2017 Budget Request, Legal Services Corporation, available at http://www.lsc.gov/media-center/publications/fy-2017-budget-request#footnoteref7_3s310e7, archived at (https://perma.cc/AN73-7U3R).
- ⁶ See, e.g., Sandefur, infra note 38; Prepaid Legal Services, infra note 224.
- ⁷ See Gillian K. Hadfield & Jamie Heine, Life in the Law Thick World: The Legal Resource Landscape for Ordinary Americans, in Beyond Elite Law: Access to Civil Justice in America (Samuel Estreicher & Joy Radice eds.) (forthcoming 2016).
- See Inventory of Innovations and other materials, Commission on the Future of Legal Services, supra note 1.
- ⁹ See Gillian K. Hadfield & Jamie Heine, Life in the Law Thick World: The Legal Resource Landscape for Ordinary Americans, in Beyond Elite Law: Access to Civil Justice in America (Samuel Estreicher & Joy Radice eds.) (forthcoming May 2016).
- ¹⁰ FY 2017 Budget Request, supra note 5.
- ¹¹ *Id.*
- ¹² See Number of Attorneys for People in Poverty, National

- Center for Access to Justice, *available at* http://justiceindex.org/, *archived at* (https://perma.cc/89C2-6EC5).
- Rebecca L. Sandefur, What We Know and Need to Know About the Legal Needs of the Public, 67 S.C. L. Rev. 443, 445 (2016); citing Consortium on Legal Services and the Public, Report on the Legal Needs of the Low and Moderate-Income Public, American Bar Association, 8, Table 3-1 1994; See also Barbara A. Curan, The Legal Needs of the Public: The Final Report of a National Survey 100 (1997); Matthew Silberman, The Civil Process: A Sequential Model of the Mobilization of Law 33 (Donald Black ed., 1985); Richard E. Miller & Austin Sarat, Grievances, Claims, and Disputes: Assessing the Adversary Culture, 15 L. & Soc'y Rev. 525, 536 (2980-81).
- Deborah L. Rhode, What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers, 67 S.C. L. Rev. 429, 429 (2016); see also Deborah Rhode, Access to Justice 3 (Oxford Univ. Press 2004).
- Rebecca L. Sandefur, What We Know and Need to Know About the Legal Needs of the Public, 67 S.C. L. Rev. 433, 466 (2016).
- ABA House of Delegates Resolution 112A (adopted Aug. 2006), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf, archived at (https://perma.cc/R7HC-RSAN).
- ¹⁷ Sandefur, *supra* n. 15.
- ¹⁸ ABA House of Delegates, supra note 16 at 9.
- See An Act to Improve Access to Legal Counsel in Civil Matters, Connecticut S.B. No. 426 (2016), available at https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB-0426, archived at (https://perma.cc/F759-XCZP). For more information on legal counsel in civil matters, also known as "Civil Gideon," see generally Tonya L. Brito, David J. Pate, Daanika Gordon, & Amanda Ward, What We Know and Need to Know About Civil Gideon, 67 S.C.L. Rev. 223 (2016).
- Investing in Justice, A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts, Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts 1, 2 (Oct. 2014), available at http://www. bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice. pdf, archived at (https://perma.cc/3ZWD-UAHC).

- Documenting the Justice Gap in Michigan Update, State Bar of Michigan in Collaboration with Michigan's Legal Services Corporation Funded Providers (Spring 2012), available at http://www.michbar.org/file/programs/atj/pdfs/ JusticeGap.pdf, archived at (https://perma.cc/ZAN7-XR2F) (last updated Spring 2015).
- Report to the Chief Judge of the State of New York, Task Force to Expand Access to Justice to Civil Legal Servs. in N.Y., at 2 (Nov. 2014), available at https://www.nycourts.gov/accesstojusticecommission/PDF/CLS%20 TaskForce%20Report%202014.pdf archived at (https://perma.cc/D264-4S2N). Notably, this number has decreased from 2.3 million in 2010, due to a series of access to justice programs launched in New York State.
- Report and Recommendations on the Future of Legal Services in Utah, Futures Comm'n of the Utah State Bar at 9 (July 29, 2015), available at https://www.utahbar.org/wpcontent/uploads/2015/07/2015_Futures_Report_revised. pdf, archived at (https://perma.cc/J8QZ-DJR3).
- ²⁴ Civil Legal Needs Study Update, Washington State Supreme Court (Oct. 2015), available at http://ocla.wa.gov/ wp-content/uploads/2015/10/CivilLegalNeedsStudy_ October2015_V21_Final10_14_15.pdf, archived at (https://perma.cc/5CKS-9QY4).
- See, e.g., Campbell Robertson, In Louisiana, the poor lack legal defense, NY Times (Mar. 20, 2016), available at http://www.nytimes.com/2016/03/20/us/in-louisiana-the-poor-lack-legal-defense.html?_r=0, archived at (https://perma.cc/ASD5-KT4D). See also discussion, infra, Recommendation 9.
- ²⁶ FY 2017 Budget Request, *supra* note 5. The current budget request is \$475 million. The ABA supports strong federal funding for the LSC and has recommended that Congress allocate the President's budget request of \$475 million for FY17. *See Legal Services Corporation*, American Bar Association, *available at* http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/access_to_legal_services/legal_services_corporation.html, *archived at* (https://perma.cc/M9TH-VPXZ).
- ²⁷ *Id*.
- Rebecca L. Sandefur & Aaron C. Smyth, First Report of the Civil Justice Infrastructure Mapping Project, Access Across America at 9 (Oct. 7, 2011), available at http:// www.americanbarfoundation.org/uploads/cms/documents/ access_across_america_first_report_of_the_civil_justice_ infrastructure_mapping_project.pdf, archived at (https:// perma.cc/JP8A-QM3L).
- ²⁹ See Julia Huston, Remedy for an Ailing Civil Justice System: Preventative Legal Care, The American Prospect, available at http://prospect.org/article/remedy-ailing-civiljustice-system-preventive-legal-care, archived at (https://perma.cc/6JPS-RHXF).

- Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers, 2013 ABA STANDING COMM. ON PRO BONO & PUB. SERV. 5 (Mar. 2013), available at http://www.americanbar.org/ content/dam/aba/administrative/probono_public_service/ ls_pb_Supporting_Justice_III_final.authcheckdam.pdf, archived at (https://perma.cc/723U-5CZN).
- April Faith Slaker, What We Know and Need to Know About Pro Bono Service Delivery, 67 S.C. L. Rev. 267, 268 (2016), citing Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers, 2013 ABA STANDING COMM. ON PRO BONO & PUB. SERV. 5 (Mar. 2013), available at http://www.americanbar.org/ content/dam/aba/administrative/probono_public_service/ ls_pb_Supporting_Justice_III_final.authcheckdam.pdf, archived at (https://perma.cc/723U-5CZN).
- ³² See *Involving Paralegals*, ABA Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, available at http://www.americanbar.org/groups/probono_ public_service/resources/pro_bono_role/paralegals.html, archived at (https://perma.cc/6N8T-QZWP).
- Executive Summary, Volunteer Lawyers for the Arts, available at http://www.americanbar.org/content/dam/aba/ images/office_president/volunteer_laawyers_for_the_arts_ organizations.pdf, archived at (https://perma.cc/W3HK-EKT2).
- The ABA Legal Answers website is targeted for launch in August 2016.
- ³⁵ In 2014, the ABA adopted a resolution that "urges jurisdictions' highest courts of appellate courts in each jurisdiction and appropriate territorial entities to adopt a rule permitting and encouraging in-house counsel already authorized to engage in the practice of law, while in the exclusive employment of an organization in a jurisdiction in which they are not licensed, to provide pro bono legal services in that jurisdiction." See Revised Resolution 104B, available at http://www.americanbar.org/content/dam/aba/ images/abanews/2014am_hodres/104b.pdf, archived at (https://perma.cc/EP6F-V33B). Thirty-one jurisdictions permitted this practice in 2014. See Terry Carter, Let more in-house counsel do pro bono services, ABA House of Delegates resolution says, ABA J. (Aug. 11, 2014), available at http://www.abajournal.com/mobile/article/let_ more_in-house_counsel_do_pro_bono_service_aba_house_ resolution_says, archived at (https://perma.cc/LP2F-F44K).
- Gillian K. Hadfield, *Innovating to Improve Access:*Changing the Way Courts Regulate Legal Markets, Daedalus 5 (2014).
- ³⁷ See Innovative Programs to Help People of Modest Means Obtain Legal Help, ABA Standing Committee on the Delivery of Legal Services, available at http://www. americanbar.org/groups/delivery_legal_services/resources/ programs_to_help_those_with_moderate_income.html, archived at (https://perma.cc/QT6C-LPDR).

- ³⁸ See Rebecca L. Sandefur, Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study, 2014 ABA J. 1 (Aug. 2014), available at http://www.americanbar.org/groups/delivery_legal_ services/resources/programs_to_help_those_with_moderate_ income.html, archived at (https://perma.cc/QT6C-LPDR).
- ³⁹ *Id.* at 12.
- ⁴⁰ *Id.* at 8.
- 41 Id. at 16 (citation omitted).
- ⁴² *Id.* at 14.
- ⁴³ Richard Susskind, The Future of Law: Facing the Challenges of Information Technology 273-74 (Oxford Univ. Press, 1996)
- ⁴⁴ See, e.g., Comments on the ABA Issues Paper on the Future of Legal Services, ABA Commission on Homelessness & Poverty, available at http://www. americanbar.org/content/dam/aba/images/office president/ homelessness_and_poverty.pdf, archived at (https:// perma.cc/N9MD-9X5T); Comments on the ABA Issues Paper on the Future of Legal Services, ABA Standing Committee on Technology and Information Systems, available at http://www.americanbar.org/content/dam/aba/ images/office_president/scotis.pdf, archived at (https:// perma.cc/TF5G-5WQH); Comments on the ABA Issues Paper on the Future of Legal Services, National Disability Rights Network (Dec. 29, 2014), available at http://www. americanbar.org/content/dam/aba/images/office_president/ national_disability_rights_network.pdf, archived at (https:// perma.cc/5QZR-QJ7M); Written Testimony from David English, Chair, Commission on Law and Aging, available at http://www.americanbar.org/content/dam/aba/images/ office president/david english.pdf, archived at (https:// perma.cc/5DLD-T6VL); Written Testimony from Debbie Segal, Immediate Past Chair of and Special Advisor to the ABA Commission on Domestic & Sexual Violence, available at http://www.americanbar.org/content/dam/aba/images/ office_president/debbie_segal.pdf, archived at (https:// perma.cc/45PW-SWF8); Elinor R. Jordan, What We Know and Need to Know About Immigrant Access to Justice, 67 S.C. L. Rev. 295, 296 (2016) (reviewing research and case law on immigrant access to legal services).
- ⁴⁵ See, e.g., Sandefur, supra note 38 at 16.
- ⁴⁶ American Bar Association and National Center for State Courts Focus Group Research on the Future of Legal Services Key Findings and Strategic Recommendations, GBA Strategies (Apr. 27, 2015)["ABA/NCSC 2015 Survey"], available at http://www.americanbar.org/content/ dam/aba/images/office_president/final_focus_group_report_ gba_strategies.pdf, archived at (https://perma.cc/69QN-GXKY).
- ⁴⁷ *Id*.
- ⁴⁸ Sandefur, *supra* note 38 at 15.

- ⁴⁹ *Id*.
- See ABA/NCSC 2015 Survey, supra note 46. Ninety-one percent of respondents agreed that people are more likely to win in court with a lawyer. Seventy-five percent of respondents agreed that lawyers can save time and money by finding answers and resolving issues quickly. Nearly two-thirds of the respondents disagreed that hiring a lawyer is not worth the cost. Four out of five respondents agreed that people are more likely to resolve a dispute without going to court if a lawyer helps them negotiate a matter. Respondents were fairly equally divided when asked if lawyers make things more complicated and make things take longer than they should. Id.
- 51 Sandefur, supra note 13 at 443-44.
- 52 See Conference of Chief Justices Conference of State Court Administrators Resolution 7, Reaffirming the Critical Importance of Adequate Funding of the Legal Services Corporation, available at http://ccj.ncsc.org/~/media/ Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Critical-Importance-Adequate-Funding-Legal-Services-Corporation.ashx, archived at (https://perma.cc/3DMP-2JLJ).
- James R. Silkenat, Legal Access Jobs Corps Will Place Law Grads in Areas with Unmet Legal Needs, ABA J. (Oct. 2013), available at http://www.abajournal.com/magazine/ article/legal_access_job_corps_will_place_law_grads_in_ areas_with_unmet_legal_needs/, archived at (https://perma. cc/4WUP-5CZA).
- ⁵⁴ See The Editorial Board, The Law School Debt Crisis, The N.Y. Times (Oct. 24 2015), available at http://www.nytimes. com/2015/10/25/opinion/sunday/the-law-school-debt-crisis. html?_r=1, archived at (https://perma.cc/4FAJ-MR69).
- 55 See Databases, Tables & Calculators by Subject, Bureau of Labor Statistics (May 10, 2016), available at http://data. bls.gov/timeseries/LNS14000000, archived at (https://perma.cc/S4SN-CSSH).
- 56 See Gillian K. Hadfield, The Cost of Law: Promoting Access to Justice through the (Un)Corporate Practice of Law, 38 Int' Rev. of Law and Econ. 1, 17 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_ id=2333990, archived at (https://perma.cc/7MAD-B24C).
- ⁵⁷ *Id.* at 18.
- Issues Paper Concerning New Categories of Legal Services Providers, ABA Commission on the Future of Legal Services (Oct. 16, 2015), available at http://www.americanbar.org/ content/dam/aba/images/office_president/delivery_of_legal_ services_completed_evaluation.pdf, archived at (https://perma.cc/RMS6-H4NZ).
- ⁵⁹ Id. See also Rhode, supra note 14 at 433 (reviewing research showing that, in many legal contexts, lay specialists "generally perform as well or better than attorneys"); Sandefur, supra note 13 at 452–53 (calling

- for a system of "coordinated providers and institutions" in which people could be connected to "the least expensive and intrusive service necessary to meet their actual legal needs").
- See Issues Paper Regarding Alternative Business Structures, ABA Commission on the Future of Legal Servs., (Apr. 8, 2016), available at http://www.americanbar.org/ content/dam/aba/images/office_president/alternative_ business_issues_paper.pdf, archived at (https://perma.cc/ XGK6-XTBQ).
- 61 See D.C. RULES OF PROF'L CONDUCT R. 5.4.
- 62 See WASH, RULES OF PROF'L CONDUCT R 5.9(a).
- See Issues Paper Regarding Alternative Business
 Structures, supra note 60. Relatedly, in February 2016,
 Georgia amended its Rules of Professional Conduct to allow
 Georgia law firms to work with and share legal fees with
 ABS firms organized in jurisdictions outside of Georgia that
 permit nonlawyer partnership and passive investment. See
 Georgia Rules of Professional Conduct, Rule 5.4. Comment
 2 to Rule 5.2 makes clear that the rule is "not intended to
 allow a Georgia lawyer or law firm to create or participate
 in alternative business structures in Georgia" but only "to
 work with an ABS outside of the state of Georgia and to
 share fees for that work".
- 64 See WASH. RULES OF PROF'L CONDUCT R 5.9(a).
- ⁶⁵ See Issues Paper Regarding Alternative Business Structures, supra note 60.
- ⁶⁶ James E. Moliterno, The American Legal Profession in Crisis: Resistance and Responses to Change, Oxford (2013) at 1.
- ⁶⁷ What the Bar Does Today, 7 Am. L. Sch. Rev. 1071, 1022 (1930-34).
- ⁶⁸ K. N. Llewellyn, *The Bar's Troubles, and Poultices—and Cures?*, 5 Law & Contemp. Probs. 104, 115 (Winter 1938). One competing perspective is that the absence of those phenomena is what made and maintains law as a profession. The Commission sees the more pertinent question at the intersection of the two perspectives.
- ⁶⁹ See discussion infra Recommendation 2.1.
- ⁷⁰ 2016 Report on the State of the Legal Market, Georgetown Law Center for the Study of the Legal Profession at 9 (2016), available at https://www.law.georgetown.edu/news/ upload/2016_PM_GT_Final-Report.pdf, archived at (https://perma.cc/M49L-EXLL).
- ⁷¹ *Id.*
- Flizabeth Chambliss, Renee Newman Knake & Robert L. Nelson, Introduction: What We Know and Need to Know About "Access to Justice" Research, 67 S.C. L. Rev. 193, 193 (2016).

- ⁷³ Gillian K. Hadfield & Jaime Heine, *supra* note 7 at 1-2.
- Jo-Ann Wallace, Edwin Burnette & Don Saunders, Issues Paper on the Future of Legal Services, National Legal Aid and Defender Association at 4 (Dec. 10, 2014), available at http://www.americanbar.org/content/dam/aba/images/ office_president/n_l_a_d_a.pdf, archived at (https://perma. cc/2MV9-UKEY).
- ⁷⁵ See Chambliss et al., supra note 72 at 194.
- ⁷⁶ See, e.g., White House Legal Aid Interagency Roundtable: Civil Legal Aid Research Workshop Report, U.S. Dep't Of Justice's Nat'l Inst. Of Just. & Office For Access To Justice With The Nat'l Sci. Found., at 3 (2016), available at https://www.justice.gov/lair/file/828316/download, archived at (https://perma.cc/KRQ7-5RRH) (reporting the results of an "Expert Working Group (EWG) of approximately 40 domestic and international researchers and practitioners to discuss the existing literature and research gaps concerning civil legal aid and its intersection with public safety and criminal justice"); Strategic Plan 2012-2016, Legal Servs. Corp. at 3 (2012), available at http://www.lsc.gov/ sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf, archived at (https:// perma.cc/ME2N-QDRK) (discussing the need for and increasing interest in empirical assessment of legal services delivery); Catherine R. Albiston & Rebecca L. Sandefur, Expanding the Empirical Study of Access to Justice, 2013 Wis. L. Rev. 101, 102 (2013) (discussing coordinated efforts by the American Bar Foundation, the National Science Foundation, and others to develop priorities and standards for access to justice research); Meredith J. Ross, Colloquium: Introduction: Measuring Value, 2013 WIS. L. REV. 67(2013) (scholarly colloquium addressing "the role of empirical research in identifying, measuring, and clarifying crucial issues of service delivery, resource allocation, and access to justice").
- Fee Chambliss et al., supra note 72 at 199 (discussing the benefits of increasing collaboration between researchers, providers, and regulators). See also Deborah Thompson Eisenberg, What We Know and Need to Know About Court-Annexed Dispute Resolution, 67 S.C. L. Rev. 245, 256 (2016) (describing a collaboration between the Maryland judiciary and an interdisciplinary research team to design a statewide evaluation of alternative dispute resolution); D. James Greiner, What We Know and Need to Know About Outreach and Intake by Legal Services Providers, 67 S.C. L. REV. 287, 293 (2016) (discussing the design and testing of "an outreach strategy intended to persuade debt collection defendants to attend court," at the request of the legal service provider staffing a program at the court to assist them).
- ⁷⁸ See Paul Lippe, What We Know and Need to Know About Watson, Esq., 67 S.C. L. Rev. 419, 425 (arguing that, compared to other professions' responses to advances in information technology, such as medicine, the legal profession has been "somewhat 'stuck'"); Stephanie Kimbro, What We Know and Need to Know About

- Gamification and Online Engagement, 67 S.C. L. Rev. 345, 352 (2016) (observing that "[I]egal professionals, for the most part, are missing" from online conversations around legal services and have been slow to adapt to new forms of consumer engagement online).
- ⁷⁹ Raymond H. Brescia, What We Know and Need to Know About Disruptive Innovation, 67 S.C. L. Rev. 203, 203 (2016).
- ⁸⁰ *Id*.
- 81 *Id*.
- 82 See generally Benjamin H. Barton, Glass Half Full: The Decline and Rebirth of the Legal Profession (Oxford Univ. Press 2015); Deborah L. Rhode, The Trouble with Lawyers (Oxford Univ. Press 2015).
- 83 See Laurel Terry, Forewarned is Forearmed: Anticipating Big Changes for the Legal Profession, American Bar Association, available at http://www.americanbar.org/ content/dam/aba/images/office_president/laurel_terry_4. pdf, archived at (https://perma.cc/Y8JJ-3TCX).
- 84 See, e.g., Kingsley Martin, The End Game: Encroachment on the Practice of Law by Service Providers and Technology, available at http://collegeoflpm.org/wpcontent/uploads/2012/01/2011_Disruptive-Technologies. TheEndGame.Kingsley-Martin.pdf, archived at (https:// perma.cc/6RXZ-4F9D) at 5-6 (arguing that information technology is "progressively moving up the food chain" and eventually "will encroach upon a substantial portion of legal tasks with the effect of reducing the need for all levels of lawyers, including experienced partners"); Lippe, supra note 78 at 419 (predicting that cognitive computing "will primarily impact the way client data is created and comes to lawyers, and how legal work product is disseminated to clients" rather than serving as a substitute for the reasoning process of lawyers); Dana Remus & Frank Levy, Can Robots Be Lawyers?, Social Science Research Network (Dec. 30, 2015), available at http://papers.ssrn.com/sol3/ papers.cfm?abstract_id=2701092, archived at (https:// perma.cc/MV6G-5SB6) (finding that automation so far has had relatively insignificant effects on lawyer employment in the large firm context); Victor Li, Why embracing artificial intelligence is in your law firm's best interests, ABA J. (Mar. 28, 2016), available at http://www.abajournal.com/news/ article/podcast_monthly_episode_73, archived at (https:// perma.cc/YBF7-TV2K).
- See Report of The Summit on the Use of Technology to Expand Access to Justice, Legal Serv. Corp., available at http://www.lsc.gov/media-center/publications/reportsummit-use-technology-expand-access-justice, archived at (https://perma.cc/49WX-KWMY); United Kingdom Civil Justice Council Online Dispute Resolution Report for Low Value Civil Claims, Courts and Tribunals Judiciary (2015), available at https://www.judiciary.gov.uk/reviews/onlinedispute-resolution/odr-report-february-2015/, archived at (https://perma.cc/W7ZC-8XKH).

- 86 See J. Charles V. Harrington, ABA National Summit on Innovation in Legal Services, Stanford Law School 2015, available at http://www.americanbar.org/groups/centers_ commissions/commission-on-the-future-of-legal-services/ national_summit/video-highlights.html, archived at (https://perma.cc/U9H9-5ZFD).
- 87 See Hon. Ann Aiken, ABA National Summit on Innovation in Legal Services, Stanford Law School 2015, available at http://www.americanbar.org/groups/centers_commissions/ commission-on-the-future-of-legal-services/national_ summit/video-highlights.html, archived at (https://perma. cc/U9H9-5ZFD).
- 88 See The Self-Help Center Census: A National Survey, ABA Standing Commission On the Delivery of Legal Servs. (Aug. 2014), available at http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_self_help_center_census.authcheckdam.pdf, archived at (https://perma.cc/N2GM-E5AA).
- 89 See Ethan Katsh & Colin Rule, What We Know and Need to Know About Online Dispute Resolution, 67 S.C.L. Rev. 329, 329 (2016) (observing that online dispute resolution "has evolved greatly" since its emergence in e-commerce in the mid-1990s" and "is increasingly being applied to other areas, including offline and higher value disputes.").
- ⁹⁰ See Lord Just. Briggs, Civil Courts Structure Review: Interim Report, Judiciary of England and Wales (Dec. 2015) at 75, available at https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1. pdf, archived at (https://perma.cc/6KGU-QSVB).
- ⁹¹ Katsh & Rule, *supra* note 89 at 339.
- ⁹² See Robert J. Derocher, Mind the Gap: Bar Associations Work Toward a 'Watershed Moment' for Legal Services, ABA, available at http://www.americanbar.org/publications/bar_leader/2014-15/september-october/mind-gap-bar-associations-work-toward-watershed-moment-for-legal-services.html, archived at (https://perma.cc/5XTK-S36X); See also Elizabeth Chambliss, Law School Training for Licensed 'Legal Technicians'? Implications for the Consumer Market, 65 S.C. L. Rev. 579, 596 (July 2014) (discussing the potential benefits of a unified model of limited licensing for insuring quality of service and mobilizing consumer demand).
- ⁹³ See Robert Ambrogi, Who says you need a law degree to practice law?, The Washington Post (Mar. 13, 2015), available at https://www.washingtonpost.com/opinions/ closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4aa1a-86135599fb0f_story.html, archived at (https://perma. cc/9K82-6NDN). See also discussion infra notes 159-64 and accompanying text.
- Wash. Exec. Order No. 25700-A-1005 (June 15, 2012), http://www.courts.wa.gov/content/publicUpload/Press%20 Releases/25700-A-1005.pdf, archived at (https://perma.cc/4B32-W6EQ).

- 95 See Penalty for Persons Who Negligently or Fraudulently Prepare Bankruptcy Petitions, 11 U.S.C § 110, available at https://www.gpo.gov/fdsys/pkg/USCODE-2011-title11/ html/USCODE-2011-title11-chap1-sec110.htm, archived at (https://perma.cc/77TG-GSRQ); See also, Welcome to the NABPP, National Association of Bankruptcy Petition Preparers, available at http://nabpp.com/, archived at (https://perma.cc/3NEZ-WM7R).
- ⁹⁶ See Bankruptcy Petition Preparer Guidelines, United States Trustee Central District of California (Mar. 1, 2014), https://www.justice.gov/sites/default/files/ust-regions/ legacy/2014/03/10/bpp_guidelines.pdf, archived at (https://perma.cc/U2RT-Q98P).
- Deborah L. Rhode, Enhancing Access to Justice Through Alternative Regulatory Frameworks (working draft) (citing Herbert Kritzer, Legal Advocacy: Lawyers and Nonlawyers at Work 76, 108, 148, 190, 201 (Univ. Mich. Press 1998)). A 2012 report, however, warns of potential abuse by bankruptcy preparers who do not adhere to the federal law requirements. See Increased Use of Bankruptcy Preparers Raises Concerns, U.S. Courts (June 18, 2012), available at http://www.uscourts.gov/news/2012/06/18/increased-use-bankruptcy-petition-preparers-raises-concerns, archived at (https://perma.cc/4KYK-2A5B). One way to address this is for a supreme court to certify all document preparers, including federal bankruptcy petition preparers, as does Arizona. Id.
- 98 See 8 C.F.R. §§ 292.2 & 1292.2, available at https://www.justice.gov/eoir/recognition-and-accreditation-program, archived at (https://perma.cc/R8S2-2FFT).
- ⁹⁹ See Mediation, U.S. Equal Employment Opportunity Commission, available at https://www.eeoc.gov/eeoc/ mediation/facts.cfm, archived at (https://perma.cc/TPU5-MA4B).
- ¹⁰⁰ See Publication 947- Main Content, IRS, available at https://www.irs.gov/publications/p947/ar02.html#en_ US201410_publink1000148593, archived at (https://perma.cc/GPJ9-CGTG).
- ¹⁰¹ See General Information Concerning Patents, U.S. Patent and Trademark Office (Oct. 2014), available at http://www. uspto.gov/patents-getting-started/general-informationconcerning-patents, archived at (https://perma.cc/43CM-XFCR).
- ¹⁰² See Program Operations Manual System, Social Security Administration, available at https://secure.ssa.gov/apps10/, archived at (https://perma.cc/5JNC-CEGF).
- ¹⁰³ See Court Navigator Program, New York State Unified Court System, available at http://www.courts.state.ny.us/courts/ nyc/housing/rap_prospective.shtml, archived at (https:// perma.cc/5ET6-PN5P).
- ¹⁰⁴ *Id*.
- ¹⁰⁵ *Id*.

- ¹⁰⁶ Administrative Order of the Chief Administrative Judge of the Courts, N.Y. Courts (2014), available at https://www. nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf, archived at (https://perma.cc/K5JH-MGNJ).
- ¹⁰⁷ See Navigator Snapshot Report, Comm. On Nonlawyers and the Justice Gap at 2 (Dec. 2014), available at http:// nylawyer.nylj.com/adgifs/decisions15/022415report.pdf, archived at (https://perma.cc/9WK2-64A5).
- ¹⁰⁸ *Id*.
- ¹⁰⁹ *Id.*
- ¹¹⁰ See Providing New Pathways to Legal Services, Assistance and Information, New York State Courts Access to Justice Program at 53 (2014), available at http://www.nycourts. gov/ip/nya2j/pdfs/NYA2J_2014report.pdf, archived at (https://perma.cc/EE4Q-UF84).
- ¹¹¹ *Id*.at 39.
- ¹¹² See, Legislative Bill Drafting Comm. 09073-01-5 (proposed N.Y. Jud. Law §§ 855-859).
- ¹¹³ *Id*.
- 114 Report to the Chief Judge, New York Permanent Commission on Access to Justice at 35 (Nov. 2015).
- ¹¹⁵ *Id*.
- ¹¹⁶ See Report to the Arizona Judicial Council, Arizona Commission on Access to Justice (March 26, 2015), available at http://www.azcourts.gov/Portals/74/ACAJ/ ReportACAJ.pdf, archived at (https://perma.cc/3F4R-DM4Q).
- 117 See id. at 3.
- ¹¹⁸ See id.
- 119 See id.
- 120 See id.
- 121 See id.
- ¹²² See id.
- ¹²³ For a description of Washington courthouse facilitators, see http://www.courts.wa.gov/committee/?fa=committee. home&committee_id=108, archived at (https://perma.cc/7WDK-TXR7). For California, see http://www.courts.ca.gov/selfhelp-facilitators.htm, archived at (https://perma.cc/8NUK-A7N5).
- ¹²⁴ Family Law Facilitators, Programs for Self-Represented Litigants Fact Sheet (May 2015), available at http://www. courts.ca.gov/documents/proper.pdf, archived at (https://perma.cc/JE58-JX79); see also Cal. Fam. Code § 10002 (West 1997).

- ¹²⁵ See id.
- ¹²⁶ Family Law Facilitators, Programs for Self-Represented Litigants Fact Sheet (May 2015), available at http://www. courts.ca.gov/documents/proper.pdf.
- ¹²⁷ See id.
- 128 See id.
- ¹²⁹ See id.
- ¹³⁰ See Background, Policy, and Services of the Child Support Commissioner and Family Law Facilitator Program, Judicial Council of California, available at http://www.courts.ca.gov/ documents/Program_Background_Policy_and_Services.pdf, archived at (https://perma.cc/B7YJ-6RG5).
- ¹³¹ See Wash. Gen. R. 27 (2002), available at http:// www.courts.wa.gov/court_rules/?fa=court_rules. display&group=ga&set=gr&ruleid=gagr27, archived at (https://perma.cc/86KG-GFGQ).
- ¹³² See Thomas George & Wei Wang, Washington's Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases: Summary Report, Washington State Center for Court Research at 5 (Mar. 2008), available at http://www.courts.wa.gov/wsccr/docs/Courthouse%20 Facilitator%20Program.pdf, archived at (https://perma. cc/8M5Q-2CKP).
- 133 See id. at 6.
- 134 See id.
- 135 See id.
- 136 See id.
- ¹³⁷ See Limited Practice Officers, Washington State Bar Association, available at http://www.wsba.org/Licensingand-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers, archived at (https://perma.cc/JUH2-QVXY).
- ¹³⁸ See id.
- ¹³⁹ See Wash. Admission to Practice Rule 12 (1999), available at http://www.courts.wa.gov/court_rules/?fa=court_rules. display&group=ga&set=APR&ruleid=gaapr12, archived at (https://perma.cc/8SGV-WK3Y). The Admission to Practice Rules are subject to approval and modification by the Supreme Court of Washington on recommendation from the Washington State Bar Association.
- ¹⁴⁰ Paula Littlewood, *The Practice of Law in Transition*, NW Lawyer at 13 (July-Aug. 2015), *available at* http://nwlawyer.wsba.org/nwlawyer/july-august_2015?pg=15#pg15.
- ¹⁴¹ *Id*.
- ¹⁴² While not part of the Commission's study, it also should be recognized that several foreign jurisdictions have implemented various forms of LSPs, including Canada

- and England/Wales. See CBA Legal Futures Initiative, The Canadian Bar Association, available at http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20 Futures%20PDFS/FuturesExecSum_Recommendations.pdf, archived at (https://perma.cc/7AAK-JPTD); see also Legal Services Act, 2007, c. 29 (U.K.), available at http://www.legislation.gov.uk/ukpga/2007/29/part/1, archived at (https://perma.cc/BT8F-B3MQ).
- ¹⁴³ See Frequently Asked Questions about Legal Document Assistants, California Association of Legal Document Assistants, available at http://calda.org/visitors/, archived at (https://perma.cc/R5KR-94D9); See also Cal. Bus. & Prof. Code § 6400-6456 (1998), http://calda.org/business-professions-codes, archived at (https://perma.cc/M43F-764T).
- ¹⁴⁴ For a full list of areas in which LDAs specialize, see http:// calda.org/visitors/#WhoAreLDA, archived at (https://perma. cc/6RWB-HL52).
- ¹⁴⁵ See California Legal Document Assistant Frequently Asked Questions, supra note 143.
- 146 See id.
- ¹⁴⁷ See Legal Document Preparers, Arizona Judicial Branch, available at https://www.azcourts.gov/cld/Legal-Document-Preparers, archived at (https://perma.cc/6MGW-89RH).
- ¹⁴⁸ See id.
- ¹⁴⁹ See Ariz. Admin. Code § 7-201 and § 7.208 (2003).
- ¹⁵⁰ See Legal Document Preparers, supra note 147.
- ¹⁵¹ See id.
- ¹⁵² See Access to Justice Commission, State Bar of Nevada, available at http://www.nvbar.org/atj, archived at (https://perma.cc/J8M9-89ZC).
- 153 See Nev. Rev. Stat. Ann. § 240A.030 (West 2014).
- ¹⁵⁴ See Complaint Filing Process, Nevada Secretary of State, available at http://www.nvsos.gov/index.aspx?page=1353, archived at (https://perma.cc/EAC4-J5HQ).
- ¹⁵⁵ Legal Technicians Task Force Final Report to the Board of Governors, Oregon State Bar Ass'n at 1 (Feb. 13, 2015), available at http://bog11.homestead.com/LegalTechTF/ Jan2015/Report_22Jan2015.pdf, archived at (https://perma.cc/HQ7E-UC5D).
- Memorandum from Staff, Limited License Working Group, Legal Aid Ass'n of California at 2 (June 17, 2013). For more details, see the California Bar Limited License Working Group, available at http://www.calbar.ca.gov/ AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup. aspx, archived at (https://perma.cc/BRN9-SXLP).
- ¹⁵⁷ See Samson Habte, Utah Gives Preliminary Nod to Nonlawyer Licensing, ABA Lawyers' Manual on Professional Conduct (Dec. 30, 2015), available at http://www.bna.

- com/utah-gives-preliminary-n57982065595/, archived at (https://perma.cc/JC8J-CVJP); Supreme Court Task Force to Examine Limited Legal Licensing, State of Utah Supreme Court at 37 (Nov. 18, 2015), available at http://www.utcourts.gov/committees/limited_legal/Supreme%20 Court%20Task%20Force%20to%20Examine%20 Limited%20Legal%20Licensing.pdf, archived at (https://perma.cc/9U3G-P7A7).
- ¹⁵⁸ Supreme Court Task Force to Examine Limited Legal Licensing, State of Utah Supreme Court at 37 (Nov. 18, 2015), available at, http://www.utcourts.gov/committees/ limited_legal/Supreme%20Court%20Task%20Force%20 to%20Examine%20Limited%20Legal%20Licensing.pdf, archived at (https://perma.cc/9U3G-P7A7).
- ¹⁵⁹ See Report and Recommendations, Minnesota State Bar Association Task Force on the Future of Legal Educ. at 2 (June 2015)(recommending that the MSBA consider establishing a limited-license legal technician certification "to identify a less costly path to a career in legal services and address unmet needs for specific types of legal services"), available at https://lawyerist.com/lawyerist/wp-content/uploads/2015/06/report-of-the-future-of-legal-education-task-force.pdf, archived at (https://perma.cc/55W9-J7DQ).
- ¹⁶⁰ See James Carlson, Colorado Studying New Limited Legal License, Colorado Supreme Court (Spring 2015)(stating that "the Colorado Supreme Court Advisory Committee formed a subcommittee to study Washington's program and make recommendations" regarding Washington's recent action towards the Limited License Technician program), available at https://perma.cc/JEP5-BFL9).
- ¹⁶¹ See Hon. Kenneth Shluger, Reforming Legal Education, Connecticut Lawyer (2015) (recommending that nonlawyers be allowed to perform some limited legal services via a post-bachelor's degree training program that would be more than a paralegal program but less than a JD program), available at http://c.ymcdn.com/sites/www.ctbar.org/ resource/resmgr/CT_Lawyer_Volume_25_-_Public/Pages_ from_March_15_-_Reform.pdf, archived at (https://perma. cc/RUR8-LJXZ).
- ¹⁶² See Mark D. Killian, Both Exciting and Scary, The Bar and the Court Look to the Future, The Florida Bar News (Feb. 15, 2015), available at http://www.floridabar.org/DIVCOM/JN/jnnews01. nsf/8c9f13012b96736985256aa900624829/ e9879a5d551f2bfb85257de70048d3f3!OpenDocument, archived at (https://perma.cc/9D4U-U3ZY); See also Vision 2016, The Florida Bar, http://www.floridabar.org/ vision2016, archived at (https://perma.cc/JEX4-JSJR).
- ¹⁶³ See 21st Century Practice Task Force, State Bar of Michigan, available at http://www.michbar.org/generalinfo/ futurelaw, archived at (https://perma.cc/M35W-RBBU).

- ¹⁶⁴ See 2014 State Plan for the Provision of Civil Legal Services to Low Income New Mexicans, The Comm. on Access to Justice of the Supreme Court of the State of New Mexico (Jan. 2015), available at http://www.nmbar.org/ NmbarDocs/forMembers/ATJ/2014StatePlan.pdf, archived at (https://perma.cc/BM9K-ZJG9).
- ¹⁶⁵ Jack P. Sahl, *Cracks in the Profession's Monopoly Armor*, 82 Fordham L. Rev. 2635, 2662 (2014) (citation and quotation omitted).
- ¹⁶⁶ See, e.g., Barton, supra note 82 at 235 (2015)("If significant numbers [become LLLTs] and charge less that would certainly help access to justice for the middle class."); Brooks Holland, The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice, 82 Miss. L.J. Supra 75, 90 n.62 (2013), (observing that "the access to justice gap might be partially closed by allowing nonlawyers to engage in a specified range of activities subject to regulatory oversight") (citations omitted).
- ¹⁶⁷ See, e.g., Stephen R. Crossland & Paula C. Littlewood, The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession, 65 S.C. L. Rev. 611, 613 (2014) (explaining that Washington State's LLLT program was designed "address access-to-justice issues for those who cannot afford attorneys").
- ¹⁶⁸ For example, the State Bar of Michigan's MichiganLegalHelp.org is designed to make the entire dispute resolution process more consumer-centric/friendly through an easily accessible web interface and self-help tools. See http://michiganlegalhelp.org/, archived at (http://perma.cc/N6AV-W8Z4).
- ¹⁶⁹ See About Us, Zeekbeek, available at https://www.zeekbeek.com/, archived at (https://perma.cc/R7EF-RK6D). Zeekbeek partners with the State Bar of Michigan and the Ohio State Bar Association and will be adding the State Bar of Indiana and Illinois in 2016. See id.
- ¹⁷⁰ Modest Means Programs, ABA Standing Comm. On Lawyer Referral and Info. Serv., available at http:// www.americanbar.org/groups/lawyer_referral/resources/ clearinghouse/modest.html, archived at (https://perma.cc/ QUM6-Z366).
- ¹⁷¹ Blueprint Project, ABA Standing Committee on the Delivery of Legal Services, available at http://www.americanbar. org/groups/delivery_legal_services/initiatives_awards/ blueprints_for_better_access.html, archived at (https://perma.cc/S4AL-QCNX).
- ¹⁷² See ABA Legal Technology Resource Center, About Us, available at http://www.americanbar.org/groups/ departments_offices/legal_technology_resources/about_ us.html, archived at (https://perma.cc/7VBN-XYMR).
- 173 See infra Appendix 4.

- ¹⁷⁴ See ATJ Assessment Materials, ABA Standing Committee on Legal Aid and Indigent Defendants, available at http:// www.americanbar.org/groups/legal_aid_indigent_defendants/ initiatives/resource_center_for_access_to_justice/atjcommissions/atj_commission_self-assessment_materials1. html, archived at (https://perma.cc/NRZ3-79D6).
- ¹⁷⁵ As one example, the New York Permanent Access to Justice Commission has been successful in working with the judiciary to secure state funding for civil legal service for those in need. The budget for 2015-16 was \$55 million for civil legal services, with a proposed \$100 million increase in annual civil legal services for 2016-2107. See 2015 New York State Legislative Agenda, New York City Bar Association, available at http://www2.nycbar.org/pdf/report/uploads/2015StateLegislativeAgendaFINAL.pdf, archived at (https://perma.cc/RQ9G-Y6RU).
- ¹⁷⁶ See Definition of Access to Justice Commission, ABA Resource Center for Access to Justice Initiatives (July 2011), available at http://www.americanbar.org/content/ dam/aba/administrative/legal_aid_indigent_defendants/ ls_sclaid_atj_definition_of_a_commission.authcheckdam. pdf, archived at (https://perma.cc/7SN2-QUM4).
- ¹⁷⁷ See Richard Granat, 13 Top Law Schools Teaching Law Practice Technology, eLawyering Blog (May 6, 2013), available at http://www.elawyeringredux.com/2013/05/articles/ virtual-law-firms/13-top-law-schools-teaching-law-practicetechnology/, archived at (https://perma.cc/X3S6-RSXD).
- ¹⁷⁸ See Report and Recommendations, ABA Task Force on the Future of Legal Educ. at 26 (Jan. 2014), available at http://www.americanbar.org/content/dam/aba/administrative/ professional_responsibility/report_and_recommendations_ of_aba_task_force.authcheckdam.pdf, archived at (https:// perma.cc/6DDU-D5SM). While the Commission recognizes the findings of the Task Force Report, it takes no position regarding the recommendations contained in the Report.
- ¹⁷⁹ See Incubator/Residency Program Profiles, ABA Standing Committee on the Delivery of Legal Services, available at http://www.americanbar.org/groups/delivery_legal_services/ initiatives_awards/program_main.html, archived at (https://perma.cc/N2L4-WHUZ).
- ¹⁸⁰ See John Christian Waites & Fred Rooney, What We Know and Need to Know About Incubators as a New Model for Legal Services Delivery, 67 S.C. L. Rev. 503, 518 (2016).
- ¹⁸¹ See also discussion infra Recommendations 7.2 and 10.2.
- ¹⁸² For more details on the myriad ways technology and social media have changed the practice of law, see the resources offered by the ABA Legal Technology Resource Center and the ABA Law Practice Division, available at http:// www.americanbar.org/groups/departments_offices/legal_ technology_resources/resources/charts_fyis.html.
- ¹⁸³ See Mark A. Robertson, Marketing Alternative Fee Arrangements, 37 ABA J. 5 (Oct. 2011), available at

- http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/alternative_fee_arrangements.html, *archived at* (https://perma.cc/7N4F-7JF2).
- ¹⁸⁴ See Robert Ambrogi, New Legal Site is Part Pro Se Portal and Part Unbundled Services Store, Law Sites (Jan. 6, 2016), available at http://www.lawsitesblog.com/2016/01/ new-legal-site-is-part-pro-se-portal-and-part-unbundledservices-store.html, archived at (https://perma.cc/3AJB-TZS6).
- ¹⁸⁵ See Thomas S. Clay & Eric A. Seeger, 2015 Law Firms in Transition, Altman Weil, Inc. at 39 (2015), available at http://www.altmanweil.com/dir_docs/resource/1c789ef2-5cff-463a-863a-2248d23882a7_document.pdf, archived at (https://perma.cc/PQ7C-MW8L).
- 186 See id. at 62.
- ¹⁸⁷ See id. at 66.
- ¹⁸⁸ Jason Ysais, Los Angeles County Bar Association Introduces Flat Fee Legal Service, Los Angeles County Bar Association, available at http://www.lacba.org/docs/default-source/pressreleases/smartlaw-release.pdf, archived at (https://perma. cc/HA5V-9532).
- ¹⁸⁹ See id.
- ¹⁹⁰ See, e.g., Sharon D. Nelson, John W. Simek & Michael C. Maschke, The 2009 Solo and Small Firm Legal Technology Guide (American Bar Association Law Practice Management Section, 2009).
- ¹⁹¹ See Brescia, supra note 79 at 214 (discussing the efficiency gains from document assembly).
- ¹⁹² See 2009 ABA Legal Technology Survey Report, Law Office Technology (2009), available at http://www.americanbar. org/content/dam/aba/migrated/tech/ltrc/sneakpeek. authcheckdam.pdf, archived at (https://perma.cc/5T5T-HKLY).
- ¹⁹³ See Roy Strom, Artificial legal intelligence, Chicago Lawyer (Sept. 2013), available at http://chicagolawyermagazine. com/Archives/2013/09/Ronald-Staudt-Legal-Software.aspx, archived at (https://perma.cc/2HEC-5GGS).
- ¹⁹⁴ See, e.g., Ron Friedmann, The Impact of Legal Process Outsourcing (LPO) You Might Not Have Noticed, Law Practice Today (Jan. 2012), available at http://www. americanbar.org/content/dam/aba/publications/law_ practice_today/the-impact-of-legal-process-outsourcing-you-might-not-have-noticed.authcheckdam.pdf, archived at (https://perma.cc/7L9L-2JX7).
- ¹⁹⁵ See Legal Process Outsourcing: A Billion-Dollar Industry, Complete with Trade Shows, Fierce Competition & Risks, Corporate Law Advisory (2016), available at http://www. lexisnexis.com/communities/corporatecounselnewsletter/b/ newsletter/archive/2014/03/17/legal-process-outsourcing-

- a-billion-dollar-industry-complete-with-trade-shows-fierce-competition-amp-risks.aspx, *archived at* (https://perma.cc/JLR3-4UC5).
- ¹⁹⁶ See Ashish Prasad & Ajay Mago, Legal Process Outsourcing: A Guide to Important Considerations, Risk Mitigations and Achieving Success, in Doing Business in India 2008: Critical Legal Issues for U.S. Companies (Practicing Law Institute, 2008), available at http://apps.americanbar.org/intlaw/spring2010/materials/ Legal%20Process%20Outsourcing/Legal%20Process%20 Outsourcing.pdf, archived at (https://perma.cc/DCE3-MFY9).
- ¹⁹⁷ Daniel W. Linna Jr., *What We Know and Need to Know About Legal Start-Ups*, 67 S.C. L. Rev. 389, 389 (2016).
- 198 See id. at 390.
- ¹⁹⁹ See Robert Ambrogi, Towards A More Accurate Listing of Legal Tech Startups, Law Sites (Apr. 28, 2016), available at http://www.lawsitesblog.com/2016/04/towards-accuratelisting-legal-tech-startups.html.
- ²⁰⁰ See Linna, supra note 197 at 391.
- ²⁰¹ See id.
- ²⁰² Bharath Krishnamurthy, Sharena Hagins, Ellen Lawton, & Megan Sandel, What We Know and Need to Know About Medical-Legal Partnership, 67 S.C. L. Rev. 377, 379 (2016); see also Medical-Legal Partnerships Pro Bono Project, ABA Standing Committee on Pro Bono & Public Service, available at http://www.americanbar.org/groups/ probono_public_service/projects_awards/medical_legal_ partnerships pro bono project.html, archived at (https:// perma.cc/JX9W-XF97). In 2007, the ABA House of Delegates passed a resolution that "encourages lawyers, law firms, legal services agencies, law schools and bar associations to develop medical-legal partnerships with hospitals, community-based health care providers, and social service organizations to help identify and resolve diverse legal issues that affect patients' health and wellbeing." Report to the House of Delegates 120A, ABA Health Law Section at 5 (May 2007), available at https:// apps.americanbar.org/legalservices/probono/medlegal/ docs/120a.pdf, archived at (https://perma.cc/88VV-AA9W).
- ²⁰³ Krishnamurthy et al., *supra* note 202 at 379.
- ²⁰⁴ See id.
- ²⁰⁵ See Davey Alba, Your Lawyer May Soon Ask this Al-Powered App for Legal Help, Wired (Aug. 7, 2015), available at http:// www.wired.com/2015/08/voice-powered-app-lawyers-canask-legal-help/, archived at (https://perma.cc/CNW4-B4VJ).
- ²⁰⁶ Ed Sohn, *Can Computers Beat Humans At Law?*, Above The Law (Mar. 23, 2016), *available at* http://abovethelaw.com/2016/03/alt-legal-can-computers-beat-humans-at-law/, *archived at* (https://perma.cc/795D-AH7B).

- 207 See How StandIn Works, StandIn, available at http://www.standin.is/, archived at (https://perma.cc/GUX5-26MY).
- ²⁰⁸ See Mobile Applications for Law Students and Lawyers: Apps for Legal Research & News, UCLA School of Law Hugh & Hazel Darling Law Library, available at http:// libguides.law.ucla.edu/c.php?g=183370&p=1208503, archived at (https://perma.cc/9D5R-8ZY3).
- ²⁰⁹ See, e.g., Ashley Hallene, Top iPad Apps for Lawyers, 30 ABA J. 2 (Mar. 2013), available at http://www.americanbar.org/publications/gp_solo/2013/march_april/top_ipad_apps_for_lawyers.html, archived at (https://perma.cc/CMY9-GDLQ).
- ²¹⁰ Joe Dysart, 20 apps to help provide easier access to legal help, ABA J. (Apr. 1, 2015), available at http://www. abajournal.com/magazine/article/20_apps_providing_ easier_access_to_legal_help, archived at (https://perma. cc/9YXX-HWCR).
- ²¹¹ *Id.* (quoting Georgetown Law Professor Tanina Rostain).
- ²¹² See Our Purpose, Shake, available at https://www.shakelaw.com/about/#purpose, archived at (https://perma.cc/85XA-WV96).
- ²¹³ See Sarah Perez, Fixed, The App That Fixes Your Parking Tickets, Gets Blocked in San Francisco, Oakland, & L.A., TechCrunch (Oct. 12, 2015), available at http://techcrunch.com/2015/10/12/fixed-the-app-that-fixes-your-parking-tickets-gets-blocked-in-san-francisco-oakland-l-a/, archived at (https://perma.cc/9KFL-FHCX).
- ²¹⁴ Our Story, DC Affordable Law Firm, available at http://www.dcaffordablelaw.org/about-the-firm/our-story/, archived at (https://perma.cc/6ZE9-JUAZ).
- ²¹⁵ Open Legal Services Brochure, Open Legal Services, available at http://openlegalservices.org/files/brochure.pdf, archived at (https://perma.cc/23XJ-N78P).
- ²¹⁶ Justice Entrepreneurs Project, The Chicago Bar Foundation, available at http://chicagobarfoundation.org/jep/, archived at (https://perma.cc/UL3B-MSKR).
- ²¹⁷ See Silvia Hodges Silverstein, What We Know and Need to Know About Legal Procurement, 67 S.C. L. Rev. 485, 488 (2016).
- ²¹⁸ *Id*.
- ²¹⁹ Melissa Maleske, Legal Procurement Changes Rules of Law Firm Engagement, Law360 (Nov. 20, 2015), available at http://www.law360.com/articles/728879/ legal-procurement-changes-rules-of-law-firm-engagement, archived at (https://perma.cc/UNE4-8N7K).
- ²²⁰ See Seyfarth Lean, Seyfarth Shaw, available at http://www.seyfarth.com/SeyfarthLean, archived at (https://perma.cc/PJ38-LNCS).

- ²²¹ See What is Lean Six Sigma?, Lean Six Sigma Institute, available at http://www.leansixsigmainstitute.org/#!what-islss/c18pr, archived at (https://perma.cc/L52X-EVL9).
- ²²² See Susan Lambreth, Your guide to legal project management, American Bar Association (May 2014), available at http:// www.americanbar.org/publications/youraba/2014/may-2014/a-reference-guide-to-legal-project-management.html, archived at (https://perma.cc/HJM7-7F2H).
- ²²³ Id.
- ²²⁴ See Standing Committee on Group and Prepaid Legal Services, American Bar Association, available at http:// www.americanbar.org/groups/group_prepaid_legal_services. html, archived at (https://perma.cc/DR3V-EL5X).
- ²²⁵ See id.
- 226 See id.
- ²²⁷ See id.
- ²²⁸ See id.
- ²²⁹ See id.
- ²³⁰ See id.
- ²³¹ See, e.g., Robert Ambrogi, Exclusive: New Nationwide Legal Insurance Plan Aims to Reduce the Justice Gap, Law Sites (Apr. 7, 2016), available at http://www.lawsitesblog. com/2016/04/exclusive-new-nationwide-legal-insuranceplan-aims-reduce-justice-gap.html, archived at (https:// perma.cc/3DB9-WXNB).
- ²³² See Unbundling Fact Sheet, ABA Commission on the Delivery of Legal Services (June 2, 2011), available at http://www.americanbar.org/content/dam/aba/administrative/ delivery_legal_services/ls_del_unbundling_fact_sheet. authcheckdam.pdf, archived at (https://perma.cc/77EV-QS7S).
- ²³³ See Forrest S. Mosten, Unbundled Legal Services for Today and Predictions for the Future, 35 Fam. Advoc. 14 (2012); Stephanie Kimbro, Limited Scope Legal Representation: Unbundling and the Self-Help Client (ABA Book Publishing 2012) ("In this rapidly changing economic and legal climate, lawyers are seeking new methods for delivering their services efficiently and effectively while attracting new types of clients. For many firms, limited scope representation—also known as à la carte or unbundled legal services—may be the solution. By providing representation for a clearly defined portion of the client's legal needs, such as preparing a legal document or making limited court appearances, lawyers can market their practice to an entirely new client base and give their firm a competitive advantage.").
- ²³⁴ See id.
- ²³⁵ See id.

- ²³⁶ See id.
- ²³⁷ See id.
- ²³⁸ See id.
- ²³⁹ Andrew M. Perlman, *Towards the Law of Legal Services*, 37 Cardozo L. Rev. 49, 100 ("The number of people who are not lawyers and are already involved in the delivery of legal or law-related services is growing rapidly."). Another scholar has divided them into three "relatively blurry" categories: (1) "Companies assembling teams for document review or other specialized legal projects;"(2) "Legal process outsourcers, typically involving foreign labor;" and (3) "Companies specializing in predictive coding and other solutions involving technology and machine learning." Rachel Zahorsky & William D. Henderson, "Who's eating law firms' lunch?", ABA J. (Oct. 1, 2013), available at http://www.abajournal.com/magazine/article/whos_eating_law_firms_lunch, archived at (https://perma.cc/W99S-TX2Y).
- ²⁴⁰ William D. Henderson, *From Big Law to Lean Law,* 3 Int'l Rev. L. & Econ. 2013 at 8, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2356330, *archived at* (https://perma.cc/JT8E-4M4B).
- ²⁴¹ Will McKitterick, *IBISWorld Industry Report OD5638:* Online Legal Services in the US at 4, IBIS World (May 2014).
- 242 See id.
- ²⁴³ *Id*.
- ²⁴⁴ See Joshua Kubicki, 2013 was a Big Year for Legal Startups; 2014 Could Be Bigger, TechCo (Feb. 14, 2015), available at http://tech.co/2013-big-year-legal-startups-2014-bigger-2014-02, archived at (https://perma.cc/7547-YN6Z).
- ²⁴⁵ See Benjamin H. Barton, The Lawyer's Monopoly What Goes and What Stays, 82 Fordham L. Rev. 3067, 3079 (2014) ("The upshot is that lawyers from big law firms to solo practitioners have started to see a slow bleed of business to nonlawyers."); Rachel Zahorsky & William D. Henderson, supra note 239.
- ²⁴⁶ Joan C. Williams, Aaron Platt & Jessica Lee, *Disruptive Innovation: New Models of Legal Practice*, Center for WorkLife Law UC Hastings College of Law at 2 (2015), *available at* http://worklifelaw.org/wp-content/uploads/2015/09/Disruptive-Innovations-New-Models-of-Legal-Practice-webNEW.pdf, *archived at* (https://perma.cc/6KZY-859Z).
- ²⁴⁷ See, Axiom Law, available at http://www.axiomlaw.com/, archived at (https://perma.cc/XZH4-C34U). Axiom Law has been in existence since 2000.
- ²⁴⁸ See Diversity and Inclusion 360, American Bar Association., available at http://www.americanbar.org/ diversity.html, archived at (https://perma.cc/8YE6-ZUSR).

- ²⁴⁹ Population Projections, United States Census Bureau, http://www.census.gov/population/projections/, archived at (https://perma.cc/EV2P-XKLY).
- ²⁵⁰ See Renee Newman Knake & Hannah Brenner, Rethinking Gender Equality in the Legal Profession's Pipeline to Power: A Study on Media Coverage of Supreme Court Nominees, 84 Temp. L. Rev. 325, 325 (2012).
- ²⁵¹ See Lawyer Demographics Year 2015, American Bar Association, available at http://www.americanbar.org/ content/dam/aba/administrative/market_research/lawyerdemographics-tables-2015.authcheckdam.pdf, archived at (https://perma.cc/ZKZ4-A7XY).
- ²⁵² See id.
- 253 See id.
- ²⁵⁴ See QuickFacts United States, United States Census Bureau, available at http://www.census.gov/quickfacts/table/ PST045215/00, archived at (https://perma.cc/57TQ-NHHE).
- 255 See id.
- ²⁵⁶ See Vault/MCCA Law Firm Diversity Survey Report, Minority Corp. Counsel Ass'n at 18 (2015), available at http://www.mcca.com/index.cfm?fuseaction=Page. ViewPage&pageId=2624, archived at (https://perma. cc/6X2P-9E43).
- ²⁵⁷ See Lawyer Demographics Year 2015, supra note 251.
- ²⁵⁸ See id.
- ²⁵⁹ See Fiona M. Kay, Stacey Alarie, & Jones Adjei, Leaving Law and Barriers to Reentry: A Study of Departures From and Reentries to Private Practice, LSAC Grants Report Series at 1 (Nov. 2013), available at http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-13-02.pdf, archived at (https://perma.cc/VKF8-UUKX).
- ²⁶⁰ See Vault/MCCA Law Firm Diversity Survey Report, supra note 256 at 3.
- ²⁶¹ See id.
- ²⁶² See Gary Anglebrandt, Suite dreams: Growing number of aspiring female general counsels find a happy ending, Crain's Detroit Business (Apr. 27, 2014), available at http://www.crainsdetroit.com/article/20140427/ AWARDS02/304279989/suite-dreams-growing-number-of-aspiring-female-general-counsels-find
- ²⁶³ See Andrew Huang, Year of the female dean, National Jurist (July 8, 2015), available at http://www.nationaljurist. com/content/year-female-dean, archived at (https://perma. cc/ZM87-84VH)
- ²⁶⁴ See id.
- ²⁶⁵ See Women in the Federal Judiciary, National Women's Law Center, available at http://nwlc.org/resources/women-

- federal-judiciary-still-long-way-go/, *archived at* (https://perma.cc/68LG-PU7J).
- ²⁶⁶ See Malia Reddick, Michael J. Nelson, & Rachel Paine Caufield, Racial and Gender Diversity on State Courts, AJS, available at http://www.judicialselection.us/ uploads/documents/Racial_and_Gender_Diversity_on_ Stat_8F60B84D96CC2.pdf, archived at (https://perma.cc/ BE4C-ZKAB).
- ²⁶⁷ See Stephanie Francis Ward, How much less do women lawyers and judges earn than men?, ABA J. (Apr. 23, 2014), available at http://www.abajournal.com/news/article/how_much_less_do_women_lawyers_and_judges_earn_than_men/, archived at (https://perma.cc/4BY4-CCGS).
- ²⁶⁸ What is Implicit or Unconscious Bias?, ABA Section of Litigation Implicit Bias Initiative, http://www.americanbar. org/groups/litigation/initiatives/task-force-implicit-bias/what-is-implicit-bias.html, archived at (https://perma.cc/5V7J-PFJG).
- ²⁶⁹ Id. (quoting Jerry Kang, Implicit Bias: A Primer for Courts, prepared for the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts, Aug. 2009).
- ²⁷⁰ Jo-Ann Wallace, et al., *supra* note 74 at 5.
- ²⁷¹ Addressing Implicit Bias in the Courts, National Center for State Courts, available at http://www.ncsc.org/~/media/ Files/PDF/Topics/Gender%20and%20Racial%20Fairness/ IB_Summary_033012.ashx, archived at (https://perma.cc/ ARF9-5KD5).
- ²⁷² See Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System, American Bar Association., available at http://www.americanbar.org/ groups/criminal_justice/pages/buildingcommunity.html, archived at (https://perma.cc/5WDP-TYG6).
- ²⁷³ See Diversity & Inclusion 360 Commission, American Bar Association, available at http://www.americanbar.org/groups/leadership/office_of_the_president/diversityandinclusion360.html, archived at (https://perma.cc/Z74P-3B2K).
- ²⁷⁴ Rochelle Klempner, *Until Civil Gideon: Expanding Access to Justice*, 41 Fordham Urb. L.J. 1189, 1196 (2014).
- ²⁷⁵ Id. at 1197. See also National Center for State Courts and State Justice Initiative, Civil Justice Initiative: The Landscape of Civil Litigation in State Courts (2015), available at http://www.ncsc.org/~/media/Files/PDF/ Research/CivilJusticeReport-2015.ashx, archived at (https://perma.cc/FSJ2-PRQY).
- ²⁷⁶ Richard Zorza, Judge Fern Fisher Testifies for Court Simplification as Access Solution, Richard Zorza's Access to Justice Blog (Oct. 1, 2011), available at https:// accesstojustice.net/2011/10/01/judge-fern-fisher-testifiesfor-court-simplification-as-access-solution/, archived at (https://perma.cc/4RFU-3VB4).

- ²⁷⁷ See, e.g., Georgia Civil Legal Needs Report, Comm. on Civil Justice-Supreme Court of Georgia Equal Justice Comm'n ("a lack of understanding as to how the court process works represents an obstacle to the courts' ability to administer justice for all").
- ²⁷⁸ Chambliss et al., *supra* note 72 at 199-200 (citations omitted).
- ²⁷⁹ *Id.* (citations omitted).
- ²⁸⁰ Rebecca L. Sandefur, Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact, 80 AM. SOC. REV. 909, 910 (2015).
- ²⁸¹ Chambliss et al., *supra* note 72 at 200; see also Jordan, *supra* note 44 at 325–26 (discussing the burdens of highly mechanistic procedures in immigration court); (citations omitted); Rhode, *supra* note 14 at 430 (noting that parties in bankruptcy, housing, and family courts "confront procedures of excessive and bewildering complexity, and forms with archaic jargon").
- ²⁸² See Gideon v. Wainwright, 372 U.S. 335 (1963).
- ²⁸³ The Legacy of Gideon v. Wainwright, The United States Department of Justice, available at https://www.justice.gov/atj/legacy-gideon-v-wainwright, archived at (https://perma.cc/YH3P-GKXD); see also Tonya L. Brito et al., What We Know and Need to Know About Civil Gideon, 67 S.C.L. Rev. 223, 224-25 (2016) (examining efforts to expand the right to counsel in civil cases involving basic human needs and reviewing research on the efficacy and administration of "Civil Gideon").
- ²⁸⁴ Charles J. Ogletree, Jr., An Essay on the New Public Defender for the 21st Century, 58 Law & Contemp. Probs.
 81, 81 (1995); see also Norman Lefstein, Financing the Right to Counsel; A National Perspective, 19 Loy. L.A. L. Rev. 391, 392 (1985).
- ²⁸⁵ Criminal Justice System at a Crossroads, Louisiana Public Defender Board at 4, available at http://lpdb. la.gov/Serving%20The%20Public/LPDB%20General%20 Information/LPDB%20General%20Information.php, archived at (https://perma.cc/6QGG-Y7FE).
- ²⁸⁶ See id.
- ²⁸⁷ See id.
- ²⁸⁸ See id at 9.
- ²⁸⁹ See id.
- ²⁹⁰ See, e.g., Argersinger v. Hamlin, 407 U.S. 25, 46 (1972) (Powell, J., concurring in the result) ("The interest protected by the right to have guilt or innocence determined by a jury . . . is not as fundamental to the guarantee of a fair trial as is the right to counsel.").
- ²⁹¹ Charles J. Olegtree, Jr., supra note 284 at 84.

- ²⁹² See Tyjen Tsai & Paola Scommegna, U.S has World's Highest Incarceration Rate, Population Reference Bureau, available at http://www.prb.org/Publications/Articles/2012/ us-incarceration.aspx, archived at (https://perma.cc/6CDL-VQPT).
- ²⁹³ See Criminal Justice System Improvements, American Bar Association, available at http://www.americanbar.org/content/dam/aba/migrated/poladv/transition/2008dec_crimjustice.authcheckdam.pdf, archived at (https://perma.cc/HD2N-6RYR).
- ²⁹⁴ Id.
- ²⁹⁵ Id.
- ²⁹⁶ Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees, OJP Diagnostic Center at 2, available at https://www.ojpdiagnosticcenter.org/ sites/default/files/custom_content/documents/fines_and_ fees_resource_guide.pdf, archived at (https://perma. cc/3637-N733).
- ²⁹⁷ Id.
- ²⁹⁸ Id.
- ²⁹⁹ See Investigation of the Ferguson Police Department, United States Department of Justice Civil Rights Division (March 4, 2015), available at https://www.justice.gov/sites/ default/files/opa/press-releases/attachments/2015/03/04/ ferguson_police_department_report.pdf, archived at (https://perma.cc/LL3R-LNUA).
- Justice System, ABA (July 2015), available at http://www.americanbar.org/content/dam/aba/images/abanews/aba-Idf_statement.pdf, archived at (https://perma.cc/BR5J-E9RL). The statement is reprinted in full at Appendix 5 of this Report.
- ³⁰¹ See World Justice Project Rule of Law Index 2015, World Justice Project 30 (2015), available at http:// worldjusticeproject.org/rule-of-law-index, archived at (https://perma.cc/J9GN-E76R) (ranking the United States as 21st on access to justice).
- 302 See id.
- Margaret Hagan, Summit on Innovation in Legal Services, American Bar Association, available at http://www. americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/national_summit/video-highlights.html, archived at (https://perma.cc/NS2B-6K82).
- ³⁰⁴ See Inadequate court resources hurt access to justice, say nation's top jurists, American Bar Association, available at http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/inadequate_courtres.html, archived at (https://perma.cc/52CE-9FCD).

- ³⁰⁵ See David Boies & Theodore B. Olson, Access to Justice in the Wake of Budget Cuts, American Bar Association, available at http://www.americanbar.org/news/abanews/abanews-archives/2013/08/press_conferenceac.html, archived at (https://perma.cc/Z9L7-BWCM).
- ³⁰⁶ Resolution 5 Reaffirming the Commitment to Meaningful Access to Justice for All, Conference of Chief Justices Conference of State Court Administrators, available at http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Commitment-Meaningful-Access-to-Justice-for-All.ashx, archived at (https://perma.cc/X28G-5UDB).
- 307 See ABA Principles of a State System for the Delivery of Civil Legal Aid, ABA Policy 112B (Aug. 2006), available at http://www.americanbar.org/content/dam/aba/directories/ policy/2006_am_112b.authcheckdam.pdf, archived at (https://perma.cc/7YWR-A5PD). ("A state's system for the delivery of civil legal aid provides a full range of high quality, coordinated and uniformly available civil law-related services to the state's lowincome and other vulnerable populations who cannot afford counsel, in sufficient quantity to meet their civil legal needs."); ABA Standards for the Provision of Civil Legal Aid, ABA Policy 111 (Aug. 2006), available at http://www. americanbar.org/content/dam/aba/directories/policy/2006 am 111.authcheckdam.pdf, archived at (https://perma.cc/ CDR2-8HQE) (articulating as key principles that civil legal aid systems should be (1) responsive to the needs of low income communities and of the clients who are served, (2) achieve lasting results, (3) treat persons served with dignity and respect. (4) facilitate access to justice for all. (4) provide high quality and effective assistance, and (5) provide zealous representation of client interests.).
- ³⁰⁸ Report of The Summit on the Use of Technology to Expand Access to Justice, Legal Servs. Corp. (Dec. 2013), available at http://www.lsc.gov/media-center/publications/report-summit-use-technology-expand-access-justice, archived at (https://perma.cc/49WX-KWMY).

³⁰⁹ *Id*.

³¹⁰ *Id*.

- ³¹¹ See ABA House of Delegates Resolution 105 (adopted Feb. 2016), available at http://www.americanbar.org/content/dam/aba/images/office_president/final_regulatory_objectives_resolution_november_2015.pdf, archived at (https://perma.cc/A7NQ-SKKS).
- 312 Laurel Terry, Steve Mark & Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 Fordham Law Review 2685, 2686 (2012). The original quote refers to "legislation" rather than "regulation," but regulatory objectives serve the same purpose in both cases.
- 313 See ABA House of Delegates Recommendation 10F (July 11, 2000), available at http://www.americanbar.org/groups/ professional_responsibility/commission_multidisciplinary_

- practice/mdprecom10f.html, archived at (https://perma.cc/9DL6-9WV7). This recommendation lists the following as among the core values of the legal profession: the lawyer's duty of undivided loyalty to the client; the lawyer's duty competently to exercise independent legal judgment for the benefit of the client; the lawyer's duty to hold client confidences inviolate; the lawyer's duty to avoid conflicts of interest with the client; the lawyer's duty to help maintain a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibilities for the quality of justice; and the lawyer's duty to promote access to justice.
- ³¹⁴ The Commission notes that there also are important professionalism values to which all legal services providers should aspire. Some aspects of professionalism fold into the Objectives related to ethical delivery of services, independence of professional judgment and access to justice. Others may not fit neatly into the distinct purpose of regulatory objectives for legal services providers, just as they do not fall within the mandate of the ethics rules for lawyers.
- ³¹⁵ See 2015 Annual Report, Office of the Attorney Regulation Counsel (2015), http://www.coloradosupremecourt.com/ PDF/AboutUs/Annual%20Reports/2015%20Annual%20 Report.pdf, archived at (https://perma.cc/VN35-NKS9).
- ³¹⁶ See Report and Recommendation, Supreme Court Task Force to Examine Limited Legal Licensing (Nov. 18, 2015), available at http://www.utcourts.gov/committees/limited_ legal/Supreme%20Court%20Task%20Force%20to%20 Examine%20Limited%20Legal%20Licensing.pdf, archived at (https://perma.cc/ZAZ2-TWQY).
- 317 See Resolution 9 Consideration of ABA Model Regulatory Objectives for the Provision of Legal Services, Conference of Chief Justices, available at http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/02012016-Recommending-Consideration-ABA-Model-Regulatory-Objectives-Provision-Legal-Services.ashx, archived at (https://perma.cc/M6RZ-CUH4).
- ³¹⁸ For a more extensive history of the "regulatory objectives movement," see Laurel Terry, *Why Your Jurisdiction Should Jump on the Regulatory Objectives Bandwagon*, The Professional Lawyer (2013), *available at* http://www.personal.psu.edu/faculty/l/s/lst3/Terry_Regulatory_Objectives_Bandwagon_2013.pdf, *archived at* (https://perma.cc/U4QB-EBUW).
- 319 Other LSP entities offer their services to lawyers. The Commission's recommendation addresses only LSP entities that deliver services directly to the public.
- ³²⁰ See, e.g., Janson v. LegalZoom, 802 F.Supp.2d 1053 (W.D. Mo. 2011).

- ³²¹ See, e.g., Gillian Hadfield, Right-Regulating Legal Markets, Truth on the Market (Sept. 19, 2011), http://truthonthemarket.com/2011/09/19/gillian-hadfield-on-right-regulating-legal-markets/, archived at (https://perma.cc/8FGQ-NQ62); Chas Rampenthal & James Peters, Comments on the ABA Issues Paper on the Future of Legal Services, ABA Comm'n on the Future of Legal Servs., http://www.americanbar.org/content/dam/aba/images/office_president/chas_rampenthal_and_james_peters.pdf (advocating "right regulation"), archived at (https://perma.cc/EWN9-5KMW)(advocating "right regulation"); Chas Rampenthal is the General Counsel for LegalZoom.com, Inc. and James Peters is the Vice President of New Market Initiatives for LegalZoom.com, Inc.
- 322 Any regulation in this area must be consistent with the First Amendment. Narrowly tailored regulations are more likely to be constitutional.
- ³²³ For example, consider the work of the National Organization of Bar Counsel (NOBC). Beginning in 2015, NOBC, through its Ad Hoc International Committee, began gathering information, analyzing data, assessing regulatory options and producing reports on the topics of ABS, entity regulation, alternative licensure, and state and international reciprocity. These resources are intended to help member jurisdictions evaluate the regulatory impacts and challenges posed by recent developments in the way legal services are accessed, delivered and regulated, both globally and domestically, and may assist in developing of responses and local initiatives that will ensure the continued protection of the public and integrity of the profession. See, Global Resources, National Organization of Bar Counsel, available at http://www.nobc.org/index.php/jurisdiction-info/ global-resources, archived at (https://perma.cc/GC3G-F2GP).
- ³²⁴ See Carole Silver, What We Know and Need to Know About Global Lawyer Regulation, 67 S.C. L. Rev. 461, 471 (noting that the definition of what constitutes "legal services" is changing, both domestically and globally). "In the United States, it once may have been accurate to define legal services as the output of lawyers' work; today, as the Commission well knows, even domestically this definition is too narrow because a host of non-law firm organizations are participating creatively in the delivery of law-related services. Outside of the United States, where regulation permits combinations of ownership and services not currently possible here, the notion of legal services is not necessarily shaped by the status of the entity or individual delivering them." *Id.* (citations omitted).
- ³²⁵ See Issues Paper Regarding Alternative Business Structures, supra note 60.
- ³²⁶ 2014 Consumer Impact Report, Legal Servs. Consumer Panel at 15 (2014), http://www. legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Consumer%20Impact%20 Report%203.pdf, archived at (https://perma.cc/U59B-GZSM).

- ³²⁷ See Resolution Adopted by House of Delegates Report, N.Y. State Bar Ass'n Task Force on Nonlaywer Ownership (Nov. 17, 2012) (urging "further study and analysis" of nonlawyer ownership), available at http://www. albanylawreview.org/Articles/VoI76_2/76.2.0865%20 NYSBA%20Report%20MLD.pdf, archived at (https://perma.cc/8CGE-VTVV).
- ³²⁸ ABA Model Rule 1.1, Cmt. 8 (2015), available at http:// www.americanbar.org/groups/professional_responsibility/ publications/model_rules_of_professional_conduct/ rule_1_1_competence/comment_on_rule_1_1.html, archived at (https://perma.cc/5ZUS-Z6HZ).
- ³²⁹ See Gary Blankenship, Board endorses technology CLE, The Florida Bar News (Aug. 15, 2015), available at http://www.floridabar.org/DIVCOM/JN/jnnews01. nsf/8c9f13012b96736985256aa900624829/ d5484d2ac35e75f185257e9d00423829!OpenDocument, archived at (https://perma.cc/8CUV-9ZAS).
- ³³⁰ See Conference of Chief Justices and Conference of State Court Administrators Resolution 5, supra note 306 (supporting the development of "a continuum of meaningful and appropriate services")
- ³³¹ Rebecca Sandefur, *supra* note 38 at 12.
- 332 See About Us, Legal Health Checkup, available at http://alegalcheckup.com/, archived at (https://perma.cc/D2B7-5GC2); General Legal Help, California Consumer Justice Coalition, available at http://www.caconsumerjustice.org/get-legal-help/other-legal-help/, archived at (https://perma.cc/HT6B-WD2V).
- 333 The National Center for State Courts, the Legal Services Corporation, and other cooperating organizations are developing public-facing platforms that will direct the public to resources to address their legal needs. Legal checkup tools should work in collaboration with these triage programs, by, for example, being fully compatible with the data exchange standards that these groups are developing.
- ³³⁴ These proposed guidelines are consistent with the Best Practice Guidelines for Legal Information Web Site Providers, developed by the ABA Elawyering Task Force. The American Bar Association House of Delegates approved these guidelines on February 10, 2003. See Best Practice Guidelines for Legal Information Web Site Providers, ABA Law Practice Division, available at http://www.americanbar.org/groups/law_practice/committees/elawyering-best-practices.html, archived at (https://perma.cc/RA34-V8ES). Despite dramatic changes in technology, the enduring principles incorporated into this Issues Paper remain sound.
- 335 The ABA has adopted "Standards for Language Access in Courts," see Standards for Language Access in Courts, ABA Standing Comm. On Legal Aid and Indigent Defendants (Feb. 2012), http://www.americanbar.org/content/dam/aba/ administrative/legal_aid_indigent_defendants/ls_sclaid_ standards_for_language_access_proposal.authcheckdam.

- pdf, *archived at* (https://perma.cc/M88P-SYRM). Those developing legal checkups should consider and comply with these standards where possible.
- ³³⁶ For example, lawyers who provide legal checkups should consider whether providing a legal checkup to a user creates a prospective client relationship under the relevant jurisdiction's version of Model Rule of Professional Conduct 1.18.
- ³³⁷ Michael Morrison, James Wren, & Chris Galeczka, Expedited Civil Actions in Texas and the U.S.: A Survey of State Procedures and a Guide to Implementing Texas's New Expedited Actions Process, 65 Baylor L. Rev. 826, 826 (2014).
- ³³⁸ Short, Summary and Expedited: The Evolution of Civil Jury Trials, National Center for State Courts at 83 (summarizing the use of expedited civil proceedings in Arizona, California, Nevada, New York, Oregon and South Carolina), available at http://www.ncsc.org/~/media/Files/PDF/Information%20and%20Resources/Civil%20cover%20sheets/ShortSummaryExpedited-online%20rev.ashx
- ³³⁹ United States ex. rel. Negrón v. State of New York, 434 F.2d 386 (1970).
- ³⁴⁰ See Federal Court Interpreter Orientation Manual and Glossary, Administrative Office of the United States Courts at 7 (May 8, 2014), available at http://www.uscourts. gov/file/federal-court-interpreter-orientation-manualpdf, archived at (https://perma.cc/7QZH-N3XW).
- ³⁴¹ See Standards for Language Access in Courts, supra note 335.
- ³⁴² See Virtual Remote Interpreting, Florida Courts, available at http://www.flcourts.org/resources-and-services/courtservices/court-interpreting/virtual-remote-interpreting.stml, archived at (https://perma.cc/Q2L3-8YRN).
- ³⁴³ See Deborah Thompson Eisenberg, supra note 77 at 249.
- 344 See Ethan Katsh & Colin Rule, supra note 89 at 343-44 ("Advancing the practice and understanding of ODR may provide expanded access to justice for citizens around the world, which will help achieve the objectives that purely face-to-face ADR services have been unable to deliver.").
- ³⁴⁵ See Richard Barton, ABA National Summit on Innovation in Legal Services, Stanford Law School (2015), available at http://www.americanbar.org/groups/centers_commissions/ commission-on-the-future-of-legal-services/national_ summit/video-highlights.html, archived at (https://perma. cc/Q8WM-SVVD).
- ³⁴⁶ Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 Chi.-Kent. L. Rev. 757, 757 (2013).
- 347 *Id.* at 762.

- ³⁴⁸Renee Newman Knake, Why Law Students Should Be Thinking About Entrepreneurship and Innovation in Legal Services, Bloomberg Law: Practitioner Contributions (Nov. 28, 2012), available at http://about.bloomberglaw.com/ practitioner-contributions/innovation/, archived at (https://perma.cc/3889-2DD4).
- ³⁴⁹ ABA Standards for Criminal Justice 7-1.3, American Bar Association, available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_mentalhealth_blk.html#7-1.3., archived at (https://perma.cc/Q5H4-2GNM).
- ³⁵⁰ *Id.*
- 351 See Diversity & Inclusion 360 Commission, supra note 248.
- 352 See Report to the House of Delegates Resolution 107, Diversity and Inclusion 360 Commission (2016), available at http://www.americanbar.org/content/dam/aba/ administrative/young_lawyers/meetings/2016/midyear/107_ hod_my16.authcheckdam.pdf, archived at (https://perma. cc/UU5Q-QLNC).
- ³⁵³ See Diversity and Inclusion 360 Commission, supra note 248.
- 354 Report to the ABA House of Delegates, Justice Kennedy Comm'n (Aug. 2004), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_kennedy_JusticeKennedyCommissionReportsFinal.authcheckdam.pdf, archived at (https://perma.cc/H3K2-3WMX).
- ³⁵⁵ *Id*.
- ³⁵⁶ Joint Statement on Eliminating Bias in the Criminal Justice System, supra note 300 at 2.
- ³⁵⁷ See Dear Colleague letter dated March 14, 2016, from Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division, and Lisa Foster, Director, Office for Access to Justice, available at https://www.justice.gov/crt/ file/832461/download, archived at (https://perma.cc/CM79-BVXH).
- ³⁵⁸ *Id.*
- 359 See Top national state court leadership associations launch National Task Force on Fines, Fees and Bail Practices, National Center for State Courts (Feb. 3, 2016), available at www.ncsc.org/Newsroom/News-Releases/2016/Task-Force-on-Fines-Fees-and-Bail-Practices.aspx, archived at (https://perma.cc/NVT3-WSJM).
- ³⁶⁰ Boston (Massachusetts) Reentry Initiative, National Institute of Justice, available at https://www.crimesolutions.gov/ProgramDetails.aspx?ID=42, archived at (https://perma.cc/NSA8-PLZT).

- ³⁶¹ Joan Petersilia, *Beyond the Prison Bubble*, 268 NIJ J. 2 (Oct. 2011), *available at* https://www.ncjrs.gov/pdffiles1/nij/235893.pdf, *archived at* (https://perma.cc/9RQ5-XJSE).
- ³⁶² *Id.*
- ³⁶³ See Hon. Laurie A. White, 2015 National Summit on Innovation in Legal Services, Stanford Law School (2015), available at http://www.americanbar.org/groups/centers_ commissions/commission-on-the-future-of-legal-services/ national_summit/video-highlights.html, archived at (https://perma.cc/EUX4-ETWH).
- ³⁶⁴ United States Department of Justice, Investigation of the Ferguson Police Department (March 4, 2015).
- ³⁶⁵ See 31 States Reform Criminal Justice Policies Through Justice Reinvestment, The PEW Charitable Trusts (Jan. 20, 2016), available at http://www.pewtrusts.org/en/researchand-analysis/fact-sheets/2016/01/31-states-reformcriminal-justice-policies-through-justice-reinvestment, archived at (https://perma.cc/6MQM-Y5G6).
- ³⁶⁶ See Mississippi's 2014 Corrections and Criminal Justice Reform, The Pew Charitable Trusts, available at http:// www.pewtrusts.org/~/media/assets/2014/09/pspp_ mississippi_2014_corrections_justice_reform.pdf, archived at (https://perma.cc/JSX7-SVFX).
- ³⁶⁷ McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970); see also Strickland v. Washington, 466 U.S. 668 (1984); see also United States v. Cronic, 466 U.S. 648, 654-55 (1984) ("'The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." (quoting Avery v. Alabama, 308 U.S. 444, 446 (1940)); State v. Waters, 370 S.W.3d 592, 597 (Mo. 2012) ("[T] he Sixth Amendment right to counsel is a right to effective and competent counsel, not just a pro forma appointment whereby the defendant has counsel in name only."); Hurrell-Harring v. State, 930 N.E.2d 217, 224 (N.Y. 2010) ("Actual representation assumes a certain basic representational relationship.").
- ³⁶⁸ See ABA Model Rule 1.1 ("A lawyer shall provide competent representation to a client, [which] includes the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); ABA Model Rule 1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client.").
- ³⁶⁹ See Lisa C. Wood, Daniel T. Goyette, & Geoffrey T. Burkhart, Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads, 42 ABA J. Lit. 1, 1 (2016), available at http://www.americanbar.org/publications/litigation_journal/2015-16/winter/meetandplead_inevitable_consequence_crushing_defender_workloads. html, archived at (https://perma.cc/WH8D-LVSA).

- ³⁷⁰ Pro Bono Justice, OneJustice, available at http://www.one-justice.org/ProBonoJustice, archived at (https://perma.cc/T5TY-CYQT).
- ³⁷¹ See About Us, Pro Bono Training Institute, http://www. pbtraining.org/about-us/, archived at (https://perma. cc/9TER-NTXR).
- ³⁷² See, e.g., Blueprint Project, ABA Standing Committee on the Delivery of Legal Services, available at http://www. americanbar.org/groups/delivery_legal_services/initiatives_ awards/blueprints_for_better_access.html, archived at (https://perma.cc/TVL8-VUC3).
- ³⁷³ See The Ideas Page, ABA Standing Committee on the Delivery of Legal Services, available at http:// www.americanbar.org/groups/delivery_legal_services/ initiatives_awards/blueprints_for_better_access/ideas_page. html#games, archived at (https://perma.cc/R3GW-4FKA).
- 374 This initiative is supported by the Public Welfare Foundation though a grant to the American Bar Foundation. For more information, see Rebecca L. Sandefur & Thomas M. Clarke, *Increasing Access to Justice Through Expanded "Roles Beyond Lawyers": Preliminary Evaluation and Classification Frameworks*, American Bar Foundation (Apr. 2015), *available at* http://www.americanbarfoundation. org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf, *archived at* (https://perma.cc/BY7R-ZRXQ). In addition, the project researchers are applying the frameworks to their empirical study of two existing programs, New York's Court Navigators and Washington's Limited License Legal Technicians.
- ³⁷⁵ See Legal Services Grass Roots Resources, ABA Commission on the Future of Legal Services, available at http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/legal-services-grass-roots-resources.html, archived at (https://perma.cc/UX4Y-QKN8). For another excellent resource on creating a comprehensive futures task force, see the State Bar of Michigan's 21st Century Law Practice Task Force Template for Other Bars, available at http://www.michbar.org/future/template, archived at (https://perma.cc/83B6-7CQW).
- ³⁷⁶ Eleanor Roosevelt, Tomorrow is Now (1963).
- ³⁷⁷ See What We Know and Need to Know About the Future of Legal Services: White Papers for the ABA Commission on the Future of Legal Services, 67 S.C. L. Rev. 2 (2016), available at http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/whitepapers.html, archived at (https://perma.cc/9RTT-BHAN).
- ³⁷⁸ Joint Statement on Eliminating Bias in the Criminal Justice System, supra note 300 at 2.

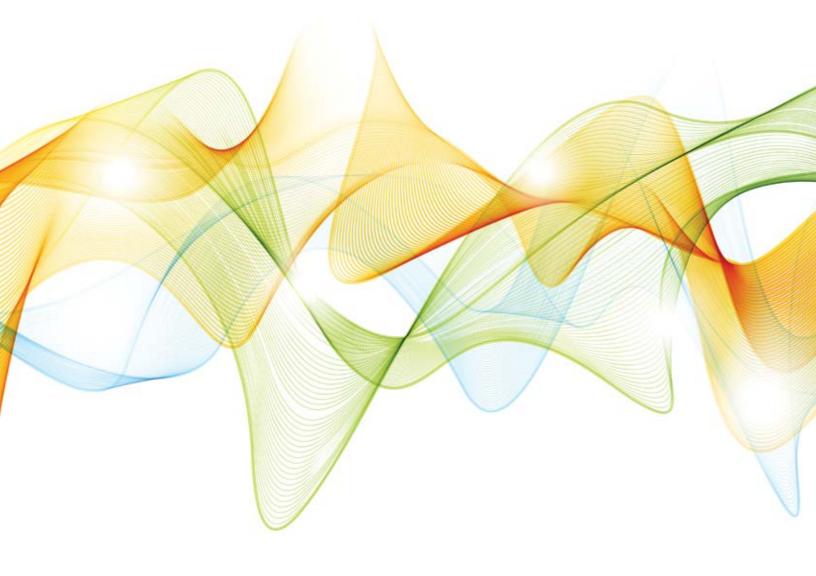


To view the Commission's final report website and to download this report, please visit ambar.org/ABAFuturesReport. A limited number of printed copies are available.

Please contact futureoflegalservices@

americanbar.org to inquire.

NOTES





Tab 4

UTAH JUDICIAL COUNCIL COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES WHERE WE ARE / SEPTEMBER 2016

		WHERE WE ARE / GET TEMBER 2010
SUBCOMMITTEE & STRATEGIC PLAN PRIORITY	WHO	WHAT
Support Self-Help Center	All	Priorities as suggested by Self-Represented Parties committee in April meeting. 1) Navigator 2) Pro Se Calendar 3) Forms 4) Court staff training 5) Drafting Orders Funding request from Judicial Council denied. Idea of putting on notice attorney may be present (for Pro Se Calendars) Idea of texting for notices (SL City grant money) Lawyer of the Day
Rules/ Legislation/ Funding Subcommittee • Analyze and improve the third year practice rule • Inactive rule promotion • Rule for appointment of counsel in termination of parental rights in district court cases	Professor Hernandez Jaclyn Howell- Powers	[Suggested] Article on highlighting inactive rule for retired attorneys. Law Student and Law Graduate Assistance Rule 14-807 change completed.

Virtual Services / Navigator Subcommittee • Support the development and implementation of virtual services in rural areas • Develop and implement a court navigator program	Leti Bentley Mary Jane Ciccarello Sue Crismon Carol Frank Susan Griffith Judge D. Thomas Jessica Van Buren	Virtual Clinic grant – Susan & Sue Survey gathering on navigator pilot project in Grant County – Leti Increase virtual connection between courts self-help center/library. Tried Vidyo (didn't work so well) - Carol Use of phone appts./State Law Library - Jessica
Education Subcommittee • Support opportunities for educating those who interact with self- represented parties.	Judge M. Thomas Lisa Collins Nancy Sylvester Mary Jane Ciccarello	Curriculum Development Subcommittee for Justice Courts, updated curriculum for Working with Self Represented Litigants – Judge Thomas [Suggested] Survey monkey on needed training? (Spanish; judges; clerks; law school providers)
Malpractice Insurance • Support increasing availability of malpractice insurance for volunteer attorneys in all capacities	Nancy Sylvester	[Suggested] Set up meeting with Huntsman Chief of Staff (Risk Assessment)
 Forms Subcommittee Continue to develop forms Refine process Work on developing forms for paralegal use / debt collection 	Jessica Van Buren Mary Jane Ciccerello Eric Mittelstadt Lisa Collins	Work in progress – Jessica Appellate Pro-Se Project – Lisa OCAP – Eric
Rule 16 Subcommittee • Streamline process	Nancy Sylvester Mary Jane Ciccerello Chris Martinez Virginia Sudbury Judge Lawrence	Proposed changes in required hearings Proposed language changes on notices

D : 1 : 0	\ <i>I</i> '	
Lawyer Directories & Referral Services	Virginia Sudbury Chris Martinez	Creation of unbundled section of the bar – Virginia
Subcommittee	Jessica Van Buren	Virginia
Encourage improvement of lawyer directories, webpage triage efforts and referral sources	Shaunda McNeil	Pro Se Clinic & Order to Show Cause Clinic – Chris Martinez & Virginia AAA task force / new Utah State Bar Directory – Shaunda

OTHER REQUESTS	
Received request we consider pro-se electronic filing as a priority / Agreed to draft statement supporting e-filing for pro se litigants.	[May be incorporated into Coris re-write as MyCase]
Suggestion to take an informal survey of which districts accept email/faxes & which don't.	



Self-Represented Litigation Network

Serving Self-Represented Litigants Remotely

A Resource Guide

Prepared for the Self-Represented Litigation Network
SRLN.org
By John Greacen, Greacen Associates, LLC
Project Consultant

July 1, 2016

This report was developed under Grant Number SJI-14-P-081 Program of Study and Development of Remote Delivery Mechanisms for Self Help Services from the State Justice Institute for the Self-Represented Litigation Network, hosted by the New Venture Fund. Points of view expressed herein are those of the author and do not necessarily represent the official position or policies of the State Justice Institute.



Project Advisory Committee

Katherine Alteneder Coordinator, Self-Represented Litigation Network and

Founding Director, Alaska Family Law Self Help Center

Mary Jane Ciccarello Director, Utah State Courts Self-Help Center

Tom Clarke Vice President for Research and Technology, National

Center for State Courts

Lisa Mecklenberg-Jackson Director and State Law Librarian, State Law Library of

Montana

John M. Greacen Principal, Greacen Associates, LLC

Melissa C. Kantola Supervising Attorney, Hennepin County Self Help

Center

Maria Livingston Self-Help Services Unit Manager

Stacey Marz Director, Family Law Self-Help Center, Alaska Court

System

Imelda Ramirez Director, Court Assistance Officer Program

Idaho Supreme Court

Melanie Snider Family Law Facilitator-Butte and Lake Counties

S.H.A.R.P. Managing Attorney-Butte, Lake and

Tehama Counties

Jessica Van Buren State Law Librarian, Utah State Law Library

Jamie L. Walter, Ph.D. Director, Court Operations, Maryland Administrative

Office of the Courts

Mary Zimmerman Director of Finance and Administration, Idaho Legal

Aid Services, Inc.

Table of Contents

Introduction	3
Findings and Recommendations	5
Remote Services Delivery Options	6
The Value Proposition for Remote Services Delivery	11
Limitations on the Use of Remote Services	16
The "digital divide"	16
Other obstacles to remote service delivery	20
Special challenges inherent in the delivery of services by telephone	20
Evidence of Efficacy	22
Review of the Literature on Legal Services Hotlines	25
Summaries of the Eight Study Site Programs	28
Alaska Court System Family Law Self-Help Center	28
Butte, Lake, and Tehama Counties, California SHARP Shared Services Model	
Idaho Judicial Branch court Assistance Office and Idaho Legal Aid Services	35
Maryland District Court Self Help Center	37
Minnesota Courts Self Help Center	41
Montana Court Help Program and Montana Legal Services Association	47
Orange County, California Self Help Services	50
Utah State Courts Self-Help Center	54
Business Process Issues	59
Scope of Remote Service Delivery Programs	59
Remote Services Clientele	60
Goals of Remote Services Delivery Programs	61
Service Methods Supported	62
Complexity of Interactions Handled	64
Features of Telephone Services	65
Supporting Services	65
Performance Measures and Data Collection	67
Average Interaction Time	68
Interactions per FTE	69
Multilingual Issues	73
Staff Development	73
Collaborative Relationships – Referrals and Outreach	75
Collaborative Relationships – Inreach	78
Planning for Remote Services Delivery	80

Introduction

The purpose of this Resource Guide is to provide information on technology and business process options for courts and other entities interested in providing services to self-represented litigants using electronic means in lieu of, or in addition to, face-to-face alternatives such as walk-in services, workshops, and clinics. This resource is a response to the urging of the Conference of Chief Justices and Conference of State Court Administrators to "national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access [to effective assistance for essential civil legal needs] through a continuum of meaningful and appropriate services."¹

The Guide is the result of contributions from eight sites – state level programs in Alaska, Idaho, Maryland, Minnesota, Montana, and Utah and county level programs in Butte, Lake and Tehama and Orange Counties in California. Idaho and Montana were chosen as well for programmatic efforts of their legal services programs, Idaho Legal Aid Services and Montana Legal Services Association.

Each of the sites contributed significantly to this effort by collecting user satisfaction information on individual cases, arranging and hosting visits to their programs by project teams, and supplying information about their programs. Each site representative participated in a visit to another project site.

The methodologies used in this study are:

- Onsite observation of remote service delivery in each of the eight sites
- Interviews of remote service provider supervisors and staff
- Interviews of judges and court staff in the jurisdiction served by the remote services program
- Completion of a program characteristics spreadsheet for each project site. These spreadsheets are a study product, available on the Self-Represented Litigation Network website.
- Focus groups of remote services users in two sites (see footnote 7 on page 15 for a
 description of those groups and the reason they were not conducted in all sites) and
 telephone interviews with selected remote services users in other sites

¹ CONFERENCE OF CHIEF JUSTICES and CONFERENCE OF STATE COURT ADMINISTRATORS, RESOLUTION 5, Reaffirming the Commitment to Meaningful Access to Justice for All, adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2015 Annual Meeting.

- Collection of feedback information from roughly 200 remote services users in seven of the project sites (Montana was able to collect information from only 80 users and Orange County, California did not participate in this process). The summaries of each of the site surveys as compiled by Survey Monkey are also a product of this study; they, too, are available on the Self-Represented Litigation Network website. There are two separate reports for Maryland, which conducted one survey primarily of chat line users and a second survey primarily of telephone services users. In Idaho, the feedback surveys were conducted both by lawyers within Idaho Legal Services and Court Assistance Officers within the court self help assistance program. The data contains no indicator of which surveys were conducted by legal aid and which by the Court Assistance Officer program. Consequently, the Idaho data is not comparable to the data from the other six sites and it is not included in some of the tables in this report for that reason.
- Collection of data on the likelihood of case completion for remote services users in Utah and in Butte, Lake and Tehama Counties in California.
- Review of the 2002 National Legal Aid and Defenders Association evaluation of the effectiveness of legal services hotlines.

The Guide is not intended to define a "best practice" model for all courts or jurisdictions to use in establishing or expanding remote services to self-represented litigants. Rather, one of the major learnings of the study is the need to tailor remote service programs to the jurisdiction and clientele to be served. We urge persons, entities, and jurisdictions interested in developing or expanding their remote services to consider all of the technologies and business processes in place in the study sites, and in other jurisdictions we were not able to include in our study or which have instituted remote services approaches since the study was conducted.

The final section provides a reference to strategic planning materials for jurisdictions interested in applying the information contained in this Resource Guide to their own situations.

The Self-Represented Litigation Network (<u>www.srln.org</u>) is prepared to offer assistance to jurisdictions seeking more help than this Guide is able to provide. You can contact SRLN at consulting@srln.org.

This project is made possible by the generous support of the State Justice Institute. It is one of two efforts supported by a single grant to the Self-Represented Litigation Network. The second is the development of business and process requirements for a statewide triaging portal, conducted under a subgrant to the National Center for State Courts, directed by Tom Clarke, Vice President for Research and Technology. Several participants in the Remote Services study have served on advisory groups for the portal requirements project, and vice versa. Triaging portals are mentioned in this Guide, but they are not described at any depth because no

comprehensive portal is in operation as of the date of this report. Triaging portals will be a significant component of future justice system service delivery. Persons, courts, agencies, and jurisdictions interested in learning about them should consult Thomas M. Clarke, **Building A Litigant Portal – Business and Technical Requirements,** National Center for State Courts (2016), which is available at http://www.srln.org/node/629/report-building-litigant-portal-business-and-technical-requirements-ncsc-2015.

Findings and Recommendations

While this study was not designed to develop a national "model" for delivery of services to self-represented litigants using remote technologies, it did produce some clear findings.

Delivery of services using telephone and internet-based technologies (e.g., e-mail, chat, text messaging) is an effective and efficient means of providing information and assistance to self-represented litigants, and should be a part of the service delivery strategy of every entity interacting with this customer group.

- Much of the public expects courts, legal services, and the bar to engage with them using these technologies.
- Providing services in a way that does not require the public to visit a courthouse or office is advantageous in terms of time and cost savings both for self-represented litigants and for the organizations that serve them.
- Remote services make sense in urban as well as rural settings.
- Most remote service court users surveyed in the course of this study would <u>not</u> have preferred a different service method; most of those preferring a different method would have chosen a different remote service method not a face-to-face method.
- Studies in two of the participating courts showed that persons for whom documents were created using a remote services method were highly likely to obtain a determination on the merits and obtain the relief they were seeking if they filed the document.

Use of <u>multiple</u> remote services (e.g., telephone, e-mail, live chat, videoconferencing and text messaging) is advantageous to the service provider and the user.

• Each remote delivery method has advantages and disadvantages: Websites provide information quickly for persons who know what questions need to be answered. Telephone-based services are available to virtually everyone, but entail the possibility that the user will not be able to get through to a service provider at the time s/he calls. Purely online services, such as e-mail, live chat, and text messages, provide a much higher likelihood of an immediate response for a user and deliver a permanent record of the interaction – freeing service providers from the need to send a follow up email to ensure user understanding of the information provided verbally over the phone. Use of

- videoconferencing allows a face-to-face interaction at a distance but requires both the sender and receiver to have more technology.
- All entities providing services remotely need to be prepared that users will not always know what questions they need to ask. Remote services delivery staff must have the training and attitude required to spend the time with a user to explore her or his situation sufficiently to ensure that s/he gets the information needed.
- Multiple delivery modes provide users with more choices. Those with the highest technological capabilities can take full advantage of them. Those without those skills can get always get phone based services.
- The smartphone is fast becoming the communication method of choice for users and all services need to be provided in a format usable on a smartphone screen.

Courts and other entities serving self-represented litigants need to be aware that some users will not be able to get their needs met through remote mechanisms. The programs studied are remarkably inventive in creating and maintaining relationships with other organizations and individuals to whom users can turn for supplemental assistance. An indispensable aspect of these relationships is that programs take responsibility for making careful referrals; "pass the buck" referrals waste the time of the self-represented litigant and the entity to which the referral is made. Referral to legal services, particularly to lawyers providing limited scope representation, is a critical outreach activity, but, like other referrals requires the exercise of judgment by remote service staff. If done perfunctorily, such referrals will be disregarded by persons who have already decided that they do not have the resources to hire a lawyer.

Courts have a responsibility to take advantage of the expertise and experience of their staff members who work with self-represented litigants to learn what parts of the legal process create the greatest obstacles for self-represented litigants and to modify their processes to remove them. Several of the remote services programs have assisted their courts in developing proactive case management processes that actively direct self-represented litigants through the court process or provide expedited resolution processes that obviate the need for contested hearings.

Remote Services Delivery Options

This Guide uses the term "Remote Services" to refer to any means of providing information or assistance to a self-represented litigant, or a person who has not become a litigant but is seeking information about a legal problem, other than a face-to-face interaction with the person at a courthouse or the physical location of a legal services, library, advocacy group, or other entity.

The following technologies for remote service delivery are in use in courts and legal services entities today. The eight study sites employ different combinations of these technologies to address their own needs and capabilities. The technologies are:

For transmitting documents

Mail – using the US Postal Service or a commercial package delivery service such as UPS or FedEx.

Fax – transmission of documents over standard grade telephone lines using fax machines at the sending and receiving ends of the transaction – captures all images on a page, including graphics, signatures, and other handwritten material.

Scanning and transmission as an email attachment – an alternative to faxing with the same benefits which substitutes a scanner (which is often a feature of a home office printer) for a fax machine and transmission of the electronic image.

Photographing and transmission as an email or smartphone message — an increasingly popular means of transmitting pictures, including pictures of documents, quickly and accurately. Used by banks for depositing checks (take a picture of the check to be deposited and send it to the bank from your smartphone) and by insurance companies for documentation of claims (take a picture of an accident scene and send it from your smartphone to your insurance agent). This process can also be used with any digital camera and a computer to send the image as an email attachment.

Virtual law office – software that allows a lawyer or paralegal to receive and send documents from clients or third parties, compose documents for a client to review or sign, and receive signed documents from clients. The software supports the client's signing of documents and transmitting them back to the law office. These transmissions are secure. The software also enables a client to maintain all documents and correspondence related to a matter in a single location, accessible through the internet.

E-filing – a secure process for sending documents to a court for filing in a case, including documents initiating a new case, and for receiving messages and documents from the court. E-filing can also include automatic service of documents on opposing parties. Most court e-filing applications have been developed for lawyers, not self-represented parties. Some allow SRLs to register and file in the same manner as lawyers. Others are combining e-filing with document assembly; once a user has completed a document by

answering questions in an automated interview, s/he can submit the document to a court electronically, paying any associated filing fee through an electronic payment mechanism.

For providing information

Website – www.Lawhelp websites developed by legal services through Legal Services
Corporation technology innovation grants exist in every state and provide information
on frequently asked legal matters, forms, and guidance concerning court processes.

Many state court systems provide users a link to the state lawhelp site or have
developed their own websites providing the same sorts of information. Website
content – information and forms – is regularly referenced in remote service interactions
conducted through other means. Websites are now accessed through smartphones and
tablets more frequently than through computers; "responsive design" is used in the
construction of websites to deliver content in a format appropriate to the device used
to access the website. Websites provide "one way" communication to a user; the user
can query the system to locate the most relevant information on the site, but cannot ask
specific questions of the system unless it is equipped with a chat feature. Websites also
support referrals to other services or to other entities, using links.

Chat – live chat is a website feature that enables a user to initiate a written communication with a staff person at the entity supporting the website. The expectation is that chat is a "synchronous" communication – with receipt of a response following very closely on the submission of a question or request.

Email – written messages between an SRL's email address and the serving organization's email address. The organization must ensure that its staff access and respond to emails submitted to the institutional email address. There is no expectation that email is a "synchronous" communication; it is more usually "asynchronous" – answered at a time different from the time a question or request is sent. Documents, links to website content, links to videos, and links to scheduling software to sign up for hearings, appointments, or workshops can all be attached to, or included in, email messages. Email messages are often used as a means for sending written follow up information after a telephone communication.

Voice telephony – like mail, the voice telephone is a widely used traditional communication technology for the delivery of remote services. The service provider usually uses a landline; the SRL customer may use a cell phone or landline. Service providers frequently employ "call center" technology to route incoming calls to multiple

staff, to provide standard information to callers prior to routing them, to monitor call volume and wait times, and to collect data on the performance of the phone system and of individual staff. A central issue in the use of voice telephony is whether to support voicemail messages, which would usually require callbacks.

Co-browsing – software that allows a remote services staff person, with the consent of the SRL, to control the operation of the SRLs computer to navigate a website or complete a document on the SRLs computer. Free co-browsing softwares include Twiddla, ShowDocument, Clavardon, TeamViewer, and Brosix. It is usually used during a telephone call, but could also be facilitated by other communications processes.

Text messaging – Many smartphone users prefer text messaging to voice telephony. Text messaging can be either synchronous or asynchronous, depending on the availability of the person texted to respond immediately. Avid texters engage in synchronous texting. But asynchronous texting is generally preferable to leaving voice messages. Current generation smartphones use voice recognition to generate text messages, combining the advantages of quick message construction with the advantages of text messaging over voicemail if the person called is not immediately available.

Outbound dialer – software that sends recorded, voice-synthesized, or text messages to users' phones or email messages to their email addresses; when the software includes the option for the person called to connect with a live operator, it is called a "predictive dialer." The most typical outbound dialer application is to send reminders for upcoming appointments or hearings. Outbound dialers are integrated with scheduling systems, case management systems, or customer relations management solutions to run exception reports and automatically send appropriate reminder messages to users.

Videoconferencing

Videoconferencing – recreates the face-to-face experience for two persons communicating from different locations. The original videoconferencing solution for courts was the Polycom hardware and software; it is still the top-of-the-line product. But its reliance on dedicated T1 phone lines makes it very expensive to operate. Courts are currently using Skype and Zoom, applications that use the internet to transmit voice and video signals, at a very low cost and satisfactory signal quality.

Customer relations management software

CRM – widely used in private industry to create and manage relationships with individual customers. They often involve the creation and use of customer loyalty cards

which when swiped at the time of a purchase link the purchase with the customer in the CRM database. The information gathered allows the company to notify customers of specials for products they are likely to be interested in purchasing. The Orange County, California Superior Court is implementing the Microsoft "Dynamics" product for use with SRLs, allowing the court to track SRL visits, services rendered during previous visits, and link them with the stages of a case recorded in the court's case management information system.

Statewide triaging portals

The 2012 Legal Services Corporation Report on the Summit on Using Technology to Enhance Access to Justice publicized the notion of a statewide access to justice portal that would enable users to enter information about their situation and themselves, and, using an artificial intelligence engine, diagnose an appropriate legal context for the problem, confirm that diagnosis, and make a referral to the least expensive resource reasonably likely to lead to a successful outcome for the user. Fully implemented, the portal concept would involve courts, self help centers, legal services providers, the bar (both full and limited scope representation options), advocates (e.g., domestic violence shelters), libraries, law school clinical programs, senior centers, and social service agencies as referral options. Several southern California trial courts collaborated to produce a small claims portal that helps persons with small value civil disputes decide how to proceed to seek redress, i.e., use of a demand letter, attempting informal negotiation or ADR, or filing a small claims petition. New Mexico Legal Aid, using funding from a Legal Services Corporation Technology Innovation Grant, will deploy a full scale civil legal services portal in early 2016, involving a half dozen New Mexico legal aid organizations. The Florida Access to Civil Justice Commission is sponsoring the first fully collaborative triaging portal involving all justice sector entities, to begin with a pilot in a northeast Florida county in 2016.

With the exception of mail, all of these technologies should be accessible via a mobile phone or tablet as well as through a computer. The challenge presented by mobile phone access (and in some cases for tablet access) is that information needs to be displayed differently to be read and manipulated on the screen of a mobile phone. Services that display information differently on different devices are referred to as incorporating "responsive design."²

-

² http://www.srln.org/node/612/srln-brief-tools-mobile-engagement-customers-clients-colleagues-and-partners-srln-2015.

The Value Proposition for Remote Services Delivery

Remote services delivery mechanisms offer resource savings for both service providers and their customers. In today's resource-challenged environment, being able to provide the same service at less cost is of significant benefit. And to be able to provide it at less cost to the customer maximizes the benefit.

Service providers save resources in these ways:

- Remote services delivery staffing can be centralized. Instead of having to deliver a full range of services at every court or legal services location, high level expertise can be assembled in a single location (or within a single unit even if staff are located in different places). The high level expertise can be used as needed over the entire geographical area. The savings can be easily visualized when a centralized remote services staff is compared to the amount of staff required to travel to remote facilities to deliver the same services face-to-face.
- Staff/customer interaction time is shorter. The same communication conducted over the phone takes less time than when it is conducted face-to-face. The Alaska Family Law Self Help Center conducted an experiment on this topic early in its existence; the results led to its decision to provide assistance exclusively over the phone. Minnesota explains part of the reason for this phenomenon from the customer's perspective; "if you arranged for child care or time off from work, spent half an hour driving to the courthouse, found public parking, and waited in line for another fifteen to twenty minutes, would you feel satisfied with a four minute interaction (Minnesota's average phone call duration) with court self help staff?" Courts using chat lines are able to have up to three chats open simultaneously.
- It is often easier for staff to establish boundaries for a remote conversation than for a face-to-face conversation.
- Several directors of remote self help services report less staff burnout than with traditional walk in service centers. Staff are better able to control the pace and demands of their work.
- Facilities costs are reduced. If fewer people are coming into the courthouse or legal aid
 office, the court needs less space to accommodate them less waiting area, less private
 meeting space for sensitive conversations, and less office space for staff (especially if
 they are allowed to work from home). Walk in self help facilities should be located on
 the first floor of a courthouse in close proximity to clerks' windows. This is the most

- valuable space in the courthouse. Reducing self help space requirements allows other services access to this prime space.
- Security issues and costs are minimized, but not eliminated. If there are fewer people
 coming into the courthouse, there are shorter weapons screening lines. Court self help
 centers and legal aid offices do have to arrange for security and deal with security
 incidents. Direct physical confrontations are not possible with remotely delivered
 services. However, virtual centers must deal with different types of security issues: for
 example, what to do with a caller indicating a suicide attempt; how to handle written or
 verbal threats to specific individuals or courthouses.
- Nebraska has used call center software to take advantage of underutilized staff resources. In Nebraska, every limited jurisdiction court must have full-time staffing even in small towns where the judge is present only one day per week. The employees in these remote locations have to know how to handle all case types; but there is not enough business to keep them fully occupied. By implementing call center software, the Nebraska AOC has been able to enlist the services of these experienced clerks in providing telephone services to customers in limited jurisdiction courts all over the state. The call center software enabled the state to "find" additional resources without hiring additional staff. Orange County, California uses the same technology to route incoming calls to a new self help center in the southern part of the county where staff have the most time available to answer them.

Customers benefit from similar savings:

- They do not incur the time and mileage costs of driving (or taking public transportation) to a courthouse or legal services office.
- They do not incur parking, child care, and meal costs associated with a trip to the nearest courthouse or legal services office.
- These costs are most extreme in sparsely populated areas where the distance to the nearest courthouse or legal services office can be a hundred miles. In Alaska, there are no roads connecting many communities with their nearest courthouse.
- Customers are able to access services many more hours per week. Even if they do not
 get through on the first call, they can call back at times convenient to them rather than
 having to arrange to be at a courthouse or a legal services office at a specific time when
 self help staff will be present. Remote services can be delivered outside of regular
 business hours if they do not require staff to be present in the courthouse or legal
 services office.

- Customer interactions with self help staff may be less stressful in the sense that if a customer forgets to ask a question, s/he can recontact the service without having to incur transportation time and costs.
- Remote services can offer right-sized, just in time delivery of legal help in a way that
 face-to-face services that require users to plan for a courthouse visit, incur travel costs
 and time, and often encounter long waits for service cannot. The best example is for
 answers to simple, straightforward questions where the cost of a face-to-face visit is
 grossly disproportionate to the service provided.

Remote service can be better than face-to-face service:

- Service providers can bring together their most experienced staff to provide the highest quality service. In most of the programs we visited, remote services staff work closely with local staff to ensure that they answer basic questions and deliver forms, referring users to the remote services staff for the assistance that the local staff are not qualified to deliver. Having remote services staff co-located or centrally managed facilitates service standardization and quality not possible when staff are widely dispersed and work for different entities and managers.
- The Alaska Family Law Self Help Center offers services from 7:00 am to 6:00 pm, Monday through Thursday, expanding the court's 8:00 am to 4:30 service window which customers with full-time jobs may find hard to use. Maryland's statewide telephone self help service is now open from 8:30 am to 8:00 pm from Monday through Friday.
- The remote delivery staff can be tasked with developing specialized materials to improve their own services and to enhance the materials available to the public and to local service providers as well, such as
 - "Canned" email and text responses
 - Short, focused YouTube videos
- Remote services offer the customer a greater degree of privacy. Communication takes
 place from a private place, not in a public space where a customer may be
 uncomfortable discussing sensitive material. It does not take place at a public facility
 where one's vehicle can be identified in a small community.
- The centralized approach of statewide remote self help services programs gives managers an optimal vantage point from which to recommend ways to simplify court procedures (referred to as "inreach" later in this report), as they have a bird's eye view

of all local practices and can easily compare and contrast to find the most effective and efficient options.

The public in general does not perceive these services to be inferior to face-to-face service. Online services have become commonplace in daily life and are an expected part of the way goods are sold and services rendered.

- Online retailing has become a major factor in U.S. and global marketing. Forrester Research estimates that the United States online retail industry will be worth \$279 billion in 2015.³ The popularity of online shopping continues to erode sales of conventional retailers. For example, Best Buy, the largest retailer of electronics in the U.S. in August 2014 reported its tenth consecutive quarterly dip in sales, citing an increasing shift by consumers to online shopping.⁴
- In 2009, a report by Gartner Group estimated that 47 percent of U.S. adults and 30 percent in the United Kingdom banked online. Today, many banks are internet only banks. Unlike their predecessors, these internet only banks do not maintain brick and mortar bank branches. Instead, they typically differentiate themselves by offering better interest rates and more extensive online banking features.
- In a November 3, 2015 Nielsen Survey of Health Care Remote Services, the firm found that patients want much more online services than they are currently receiving.
 - Over 50% want online scheduling
 - One third want test results through an online portal
 - One quarter want to be able to send photos of medical conditions electronically for phone or email consultation
 - o Among those 18-34, 40% want text reminders of appointments
- In Alaska we visited the Child Support Services Division. Front counter staff interacting with the public were being asked to maintain a tally sheet on which they recorded their interactions and, for each one, answered the question, "Could this interaction have been conducted satisfactorily by phone?"
- In December 2015, the Orange County, California, Superior Court distributed surveys to determine the level of interest in remote services from persons attending four court family law calendars. Of the 63 persons who completed surveys, 81% would have liked to be able to select the date and location of a court-sponsored workshop online, 84%

³ <u>"Forrester: Online Retail Industry In The US Will Be Worth \$279 Billion In 2015"</u>. TechCrunch. February 28, 2011.

⁴ "Best Buy looks to new products to push sales". Minneapolis News.Net. 26 August 2014.

were interested in receiving email updates and video guides, and 86% were interested in being able to manage and track their cases online.⁵

Given the universal acceptance and expectation of online services, we were not surprised to find that court users in the study sites approve of remote delivery mechanisms. Seven of the study sites conducted user satisfaction surveys of roughly 200 persons served remotely during 2015.⁶ At the end of the survey, we asked "Would it have been better for you to get assistance today in some way other than (add the method of service provided today, e.g., "by phone," "by chat," "by video conference")?" In every site, a majority answered, "No." In four of the seven sites, fewer than 20% answered, "Yes."

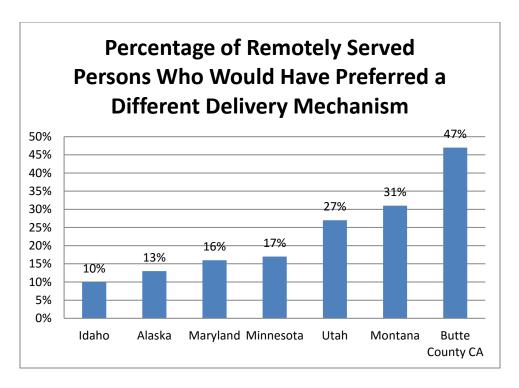
Further, most of the preferences for other methods of service delivery were for other remote services methods. Persons stating that they would have preferred a different form of service were allowed to identify multiple preferred forms of service. The surveys recorded 401 such preferences. Of these, 165 were for face to face interaction. The remaining 236 preferences (59% of the total stated preferences) were for other forms of remote service, such as preferring text or chat over telephone communication.⁷

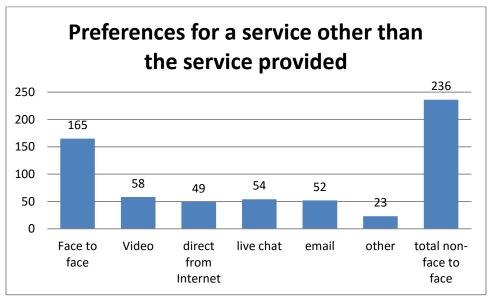
_

⁵ The survey is discussed more fully in the discussion of Orange County's self help services later in the report.

⁶ Montana was able to complete only 80 user satisfaction surveys.

⁷ The study design included convening focus groups of remote service customers to explore further their experiences with remote service delivery. Small focus groups of four persons each were recruited in Idaho and Montana. In both instances, the participants were older persons from the local community we visited. The input we received in each location was the same – the remote services were completely satisfactory, but "of course, communication is always best when it is face to face." Given the difficulty of recruiting focus group participants who would be representative of the target audiences for remote services, we discontinued the focus group component of the study. In Utah and Alaska we spoke with individual remote services customers from rural settings by telephone; they confirmed not only that the remote services they received were entirely satisfactory, but that face to face services would have been impossible or prohibitively expensive to access.





Limitations on the Use of Remote Services

The "digital divide"

The major concern expressed about remote services delivery is that 100% of Americans do not yet access the internet. Of the sixteen remote access methods catalogued in this report, ten of

them require internet access. Five more require access to a telephone. The final one – snail mail – merely requires a mail address (which cannot be taken for granted for those in transition because of a divorce or eviction, or of course not for the homeless as well⁸).

The Pew Research Center provides regular surveys of technology use in the United States. Its most recent report on device ownership shows that 73% of Americans own computers, 68% own smartphones, 45% own tablets, and 19% own mobile reading devices. Eighty-five percent of Americans now have broadband internet access. Some demographic groups have more limited internet access – often because of a lack of interest or a perception of lack of relevance to their lives, inability to learn how to use it, or the cost of owning an access device, connecting to the internet, and paying monthly usage fees. The groups with lower than average internet access are seniors (65 years of age and older) – 61%; persons with a high school education or less – 67%; persons in households with less than \$30,000 annual income – 75%; rural Americans – 76%; and Black and Hispanic Americans – 80% and 82% respectively. 10

A 2001 study sponsored by the Pew Charitable Trust found significant differences in internet penetration from state to state; 64% of Alaska's adult population had internet access compared to 37% in Mississippi. New Hampshire, Colorado and Maryland were also high in access, while Mississippi's neighboring states were low. Data gathered for this study show similar disparity in the use of communications technologies by remote services users in seven of our study sites.

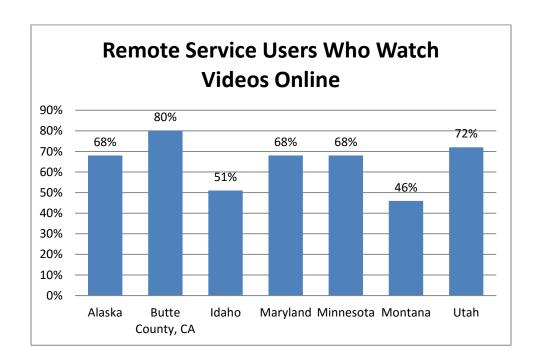
Self help staff in seven of the study sites surveyed roughly 200 remote services users in each site during the course of this study; Orange County, California was unable to participate and Montana was able to complete only 80 surveys. Eighty-four percent or more of the remote services users surveyed agreed to answer questions for the survey, except in Utah where the participation rate was only 51%. We asked three questions to gauge the level of technological sophistication of remote services users: "Do you watch videos online (like YouTube, Facebook, or videos made by family or friends?" "Can you do word processing?" "Do you have access to a printer?" The results are shown in chart form below.

⁸ Alaska's Family Law Self Help Center does send written documents to homeless shelters, which in Alaska accept mail for their residents.

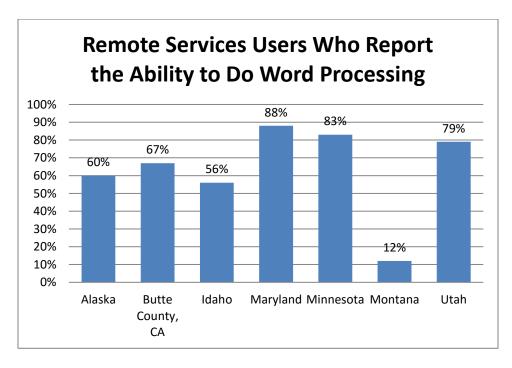
⁹ http://www.pewinternet.org/2015/10/29/technology-device-ownership-2015/

¹⁰ http://www.pewresearch.org/fact-tank/2015/07/28/15-of-americans-dont-use-the-internet-who-are-they/

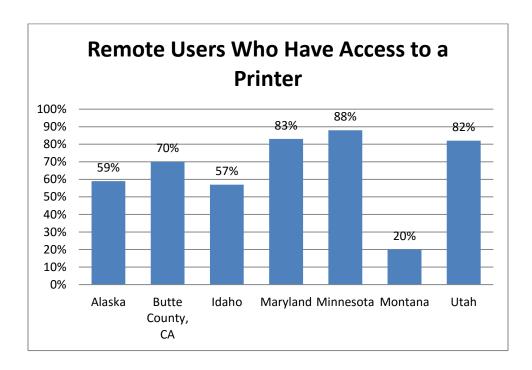
In four of the sites, roughly two thirds of remote services users watch videos online. The percentage was highest in Butte County, California (80%) and only roughly half in Idaho and Montana.



Ability to do word processing varied far more widely, from 88% in Maryland to 12% in Montana. More than half of remote services users outside of Montana reported that they can do word processing.



The variation in access to a printer mirrors the ability to do word processing. Over 80% of the remote users in Maryland, Minnesota and Utah have access to a printer. More than half in Alaska, Butte County, California, and Idaho have printer access. But only 20% of Montanans report having such access.



This study data shows that technological sophistication varies markedly from state to state. And service providers should take steps to learn the level of sophistication of their users in designing their delivery system. For instance, Montana courts and legal aid should not assume that their users will be able to use document assembly applications from their homes or without assistance elsewhere.

On the other hand, this data on varying levels of sophistication comes from remote services users — users who overwhelmingly (except in Butte County) favor the remote service delivery system they used over other alternatives, including face to face communication. Therefore, the evidence also stands for the proposition that persons without high levels of technological sophistication are able to use remote service delivery methods successfully.

We summarize all of this data on the varying use of technology across the country in this way: The internet has now reached the 85% penetration rate nationally, with variations from state to state. Resources invested in internet-based service delivery will have a very high return on investment for justice system entities, just as has proved true for the rest of our economy and

other service providers. The way in which those services are deployed should take into account the possibility that a particular population lags behind the national rate of technology adoption. Is there any validity to the view that internet based service delivery should not be used because some demographic subgroups fall below the national average in accessing the internet? No. The reality today is that the "digital divide" is not very wide – only 5% for Black Americans, 9% for rural Americans, 10% for poor Americans, and 24% for our seniors. The heavy majority of persons in all demographic groups has access to and use the internet, and will benefit from online services. Service providers should, however, ensure that alternative delivery systems are available for non-internet users. Descriptions of the service delivery models in use in the eight study sites provide good examples of collaborative efforts to provide those alternative service delivery mechanisms.

This discussion identifies one of the themes highlighted in the Executive Summary – more alternative means of access to services are better, provided they are not disproportionately resource intensive.

Other obstacles to remote service delivery

Remote service delivery faces a variety of real obstacles that are inherent in all forms of justice system activities – obstacles associated with lack of functional literacy, ¹² lack of English proficiency, problems posed by hearing and sight impairment, and physical mobility challenges. Just as these problems are not unique to remote services delivery, their solutions are the same as in other areas. The eight study sites employ a number of methods for engaging interpreter services and assistive services for other impairments.

Special challenges inherent in the delivery of services by telephone

In a courthouse, you can see how many people are waiting to be served. On the internet you see a queue of messages waiting for responses. Unless a program uses call center software, you do not know how many telephone customers get a busy signal or abandon their call because they have been on hold too long. But even with call center software, you cannot measure what percentage of customers is not actually reaching your staff. Alaska has spent considerable effort to ascertain this statistic. Over a one year period, it found that 58% of callers got through on the first attempt, an additional 23% got through to the staff at another time, and 19% never made contact with the Center. This service "gap" is a significant issue. It is not necessarily an indication of insufficient staff resources. It simply reflects that a potential

¹¹ Note that the backbone of legal services for seniors comes through a well established remote delivery system of a national network of senior legal hotlines. For more information see http://www.legalhotlines.org/.

¹² See National Assessment of Adult Literacy at https://nces.ed.gov/naal/index.asp.

user was not able to reach your services at the time s/he attempted to do so – and chose not to continue to try to reach you. The crisis hotline point of view (for instance, domestic violence or suicide prevention) is that every call presents a possibly unique opportunity for intervention. A small portion of the calls for self-help assistance may fall into this category, but the vast majority of calls do not. It is more likely the case that the caller found an answer elsewhere – on a website or in a document repository, or by making contact with another service – or decided that obtaining the answer was not worth the time required to obtain it.

To a significant extent, this problem is actually no different from other service delivery mechanisms. The courthouse-based self help center has no way of measuring the percentage of potential users who fail to take advantage of the service because of the inconvenience of accessing the courthouse. Email and chat programs have no way of knowing how many potential inquirers encounter sufficient difficulties articulating their problem or question that they do not send a message.

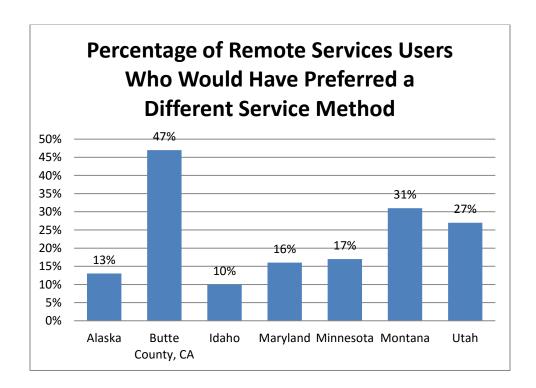
Telephone service delivery poses several additional special problems:

- Whether to use voicemail. Giving a caller an opportunity to leave a message with a
 callback number provides a solution to the problem of the unknown level of unavailable
 access. However, the Alaska Family Law Self Help Center did an experiment with and
 without voicemail. It found that following up on voicemail messages so frequently
 resulted in failed calls and "telephone tag" that the Center staff were able to complete
 more calls by eliminating the voicemail function.
- Necessary callbacks. There is a category of call that we refer to as "complex" in which
 the staff member needed more detailed information about the case or about the court
 process than s/he could obtain during the call. In this situation, the staff person could
 reach agreement that the response will be provided by email. But it is often necessary
 to arrange for a callback to a specific phone number at a specific time. The program
 needs to have a policy on how many times the callback is attempted.
- Whether to give preferred access to "repeat" customers. There are advantages to having a staff person continue to interact with a repeat customer. The experience of remote service providers is that a customer will want to talk about the specifics of her or his case with every new service provider s/he encounters. This can be avoided with a familiar staff person who knows the background for the call and what assistance has been provided previously. The staff person and caller may have established a useful level of trust and rapport. To take advantage of these factors, Alaska allows its staff members to give out their direct line phone numbers for future reference; calls on that line take precedence over calls coming into the main number. Staff private lines in Alaska do have voice mail; staff who do not have a pending call from the central number will use the time to make call backs to these repeat customers. Other programs, such

as Minnesota, treat every caller the same, whether it is the first or the tenth call on the same matter from the same caller. A return call goes into the standard rotation and will probably be answered by a different staff person.¹³

Evidence of Efficacy

Post-service delivery surveys conducted in seven of the eight program sites showed that persons who received self help services through a remote service delivery mechanism would not have preferred a different service method. While 47% of users in Butte, Lake and Tehama Counties in California would have preferred a different service method, most of the programs had fewer than 20% with that answer, and no other site had even one-third who would have preferred a different method.



As noted previously, most of the preferences for other methods of service delivery were for other remote services methods. Persons stating that they would have preferred a different form of service were allowed to identify multiple preferred forms of service. There were 401 stated preferences – 165 for face to face interaction and 236 (59% of the total stated preferences) for other forms of remote service, such as preferring text or chat over telephone communication.

22

¹³ This same issue arises in walk in self help centers. Does the service attempt to pair customers with staff who have served them previously?

The study supplemented this data with interviews with judges and court staff in every site visited. Uniformly, judges and staff expressed complete satisfaction with the services delivered remotely in their jurisdiction. Judges reported how their courtrooms ran much more expeditiously when remote service users came to court with papers in proper order and prepared to participate in the proceeding. Staff noted how useful it was to have a resource to which to refer persons whose questions they were unable to answer – either because they lacked the requisite knowledge or were unable to devote the time needed to meet the customer's needs. Several of the judges and staff members reported seeking assistance directly from the self help center staff to answer legal or procedural questions of their own.

The Utah Self Help Center gathered data on three sets of cases to address the question, "How effective are persons in Utah in getting their cases resolved through the court process if they receive self help services remotely?"

The first study was of 50 divorce cases initiated between July 1 and December 30, 2014 using the Utah state OCAP on line forms preparation service in which both parties were self-represented. As of June 2015, 38 of these cases (76%) had final divorce decrees. Six cases (12%) were still pending. One of the cases was dismissed at the request of the parties. Five cases (10%) were dismissed by the court for procedural reasons. Of the cases resolved by June 2015, 89% of them had been completed successfully. On average, these cases were decided within 3 months.

The second study was of 50 divorce cases filed in Utah in which a self-represented party contacted the Self-Help Center between January 1 and October 31, 2015. The data was collected in November 2015. Utah has a 90 day waiting period between filing of a divorce petition and entry of a final decree, unless waived for extraordinary circumstances. Twentynine of these cases (58%) had a final divorce decree at the time of data collection. Twelve of the cases (24%) remain open. Three (6%) were dismissed at the request of the parties and six (12%) were dismissed by the court for procedural reasons. Of the cases resolved by November 2015, 84% of them had been completed successfully. On average, these cases were decided within 5.5 months.

The third study was of 50 minor guardianship cases filed in Utah between July 1 and December 30, 2014 using the Utah state OCAP on line forms preparation service in which the petitioners were self-represented. Data on these cases was collected as of June 2015. These cases require certification of completion of testing on the duties of a guardian (included in the OCAP program), and a hearing on the petition. At the time of data collection, 28 (56%) of the cases

had resulted in full guardianship and 10 (20%) had resulted in school guardianship. One was dismissed at the request of the petitioner. One was denied on the objection of a parent. Six (14%) were dismissed by the court for procedural reasons. Only two of the cases were still pending. Of the cases decided at the time of data collection, 88% were decided on the merits, and 85% were completely successfully from the point of view of the petitioner. On average, these cases were decided within 7 weeks.

This data paints the Utah courts, their OCAP forms process, and the Utah Self-Help Center in a very favorable light. From 84% to 89% of the cases initiated by self-represented litigants were completed on their merits in a very timely fashion. Beyond doubt, it is possible for persons representing themselves to get their cases completed in the Utah courts using the remote services available to them.

Data collected by the SHARP program in Butte, Lake, and Tehama Counties in California show similarly positive results for persons assisted remotely by that program. The program collected data on 50 participants in workshops conducted by remote videoconferencing. It reviewed court records to find out how many of them filed papers developed during the workshops and, of those, how many obtained relief, how many did not, whether those who did not failed on procedural grounds or on the merits, and how many were still pending. The results are presented in the table below.

SHARP Data on Effectiveness of Remote Video Workshops

Participants tracked	Documents filed	Relief obtained	Relief denied on the merits	Procedural dismissal	Still pending
50	34	28 ¹⁴	3	0	4

Of the 35 participants who filed papers prepared during the videoconference workshop, 80% obtained relief, 9% were denied relief on the merits, none were dismissed on procedural grounds, and 12% were still pending. Of the filed cases that have been resolved, 90% resulted in the participant obtaining the relief requested and 10% resulted in denial on the merits. Both of these results are successes for the remote services self help program, since it has no stake in the outcome of a matter – merely that the party assisted was able to present the matter to the court for resolution on the merits.

24

¹⁴ In one instance a participant did not file the child support modification paper prepared during the workshop but nonetheless obtained relief administratively through the child support enforcement agency.

The conclusion to be drawn from the SHARP data is the same as that shown by the Utah data – there is no doubt that persons served remotely in the three counties served by SHARP are able to get their cases completed in the courts in a timely manner.

Review of the Literature on Legal Services Hotlines

Jessica Pearson and Lanae Davis of the Center for Policy Research, working in conjunction with the project for the Future of Equal Justice, completed an evaluation of effectiveness of telephone Hotline services provided by legal services programs. The third phase of the study, published in 2002¹⁵, followed up with persons who had been assisted by Hotline services to learn whether they 1) understood the advice they were given by a Hotline, 2) whether they followed up on that advice, and 3) whether they realized a satisfactory resolution of their problems. The study conducted follow up telephone calls with over 2,000 Hotline users three to six months after their interaction with one of five Hotlines representative of Hotlines throughout the nation. They also reviewed Hotline case files and interview notes.

The differences between legal services hotlines and remotely delivered court-based self help services are such that many of the findings of the Pearson/Davis study are of little relevance to this study. Legal services hotline programs deliver legal advice to a client with the outcome measure being whether that client prevails in her or his legal matter. Court-based self help services provide legal information to assist court customers to make use of the court's processes if they decide to do so. They provide assistance to all parties in a controversy if they ask for help. The court self help service has no stake in which party prevails, seeking rather to ensure that all customers succeed in having their matter presented to and resolved by the court on the merits.

Consequently, the portions of the Pearson/Davis study of most relevance to this study are those dealing with client comprehension of the advice given them by the hotline. Those findings are:

- Clients who were told to hire a private attorney had the worst outcomes and were the most dissatisfied. Only 18% of persons advised to hire a private attorney did so.
- The most favorable outcomes resulted from "brief services" instances in which the Hotline attorney wrote a letter or made a telephone call on behalf of the client or completed a form or made a "hot" referral rather than relying on the client to perform those actions. In descending order of efficacy were coaching a client how to deal with a

_

¹⁵ http://www.nlada.org/DMS/Documents/1037903536.22/finalhlreport.pdf

private party, providing written legal information, and coaching clients on how to proceed on their own in court. The least effective services were coaching to deal with a government agency or referral to another agency.

- Clients with the least favorable outcomes were Spanish-speaking, Hispanic, individuals
 with the lowest educational attainment, those who reported no income and those who
 were separated and living apart from their spouse. The most successful clients were
 white, English-speaking, educated at least to the 8th grade, and not separated from their
 spouse.
- Many clients interviewed faced barriers to following up on advice given. One of those
 was a family disability or health problem; this category of client fared no worse than the
 average. However, clients with transportation problems, depression or fear of a current
 household member or former partner, inflexible work, school or daycare schedules, or
 with serious English comprehension difficulties fared worse than the average.
- Chances of a favorable outcome were enhanced by getting written material, by getting a follow up call from the Hotline, or help from someone other than the Hotline worker.

Some of the recommendations of the study are pertinent to remote delivery of self help services:

 Hotlines should recognize that certain demographic groups are less likely to obtain favorable outcomes, screen callers for those characteristics, and develop protocols for dealing with those clients, including increased support and more extended services.

Remote service delivery programs included in this study typically obtain demographic data <u>after</u> providing assistance, not before, and do not vary the nature of assistance rendered based on user demographics. There are two exceptions to this general statement: In Maryland, remote service lawyers obtain demographic information <u>before</u> dispensing advice and therefore are able to take this information into account in tailoring their advice. In Alaska in particular, and in some other programs, remote services delivery staff screen for particular user characteristics, such as membership in an Alaska Native tribe, active duty military, or victim of domestic violence – which are highly relevant to legal and service options available to them.

This study has documented the myriad ways in which court-based remote service delivery programs create a network of collaborative relationships with programs and entities that can provide more intensive assistance to persons whose needs cannot be met through remote services alone.

Hotlines should routinely provide written information to clients.

Remote service delivery by email, chat, and text automatically incorporate written information; telephone services delivery in Utah is invariably followed up with a personalized email follow up. This usually happens in Alaska. It happens when the staff deem it necessary in Butte and Orange Counties in California, Idaho, Maryland, Minnesota, and Montana.

Hotlines should recognize that telling a caller that they should obtain a private attorney
is unlikely to result in a successful outcome and "explore alternative services that are
more likely to result in successful outcomes."

Remote services programs routinely advise SRLs to obtain lawyers when the circumstances of their case suggest that they are unlikely to obtain a successful outcome without one. That is unlikely to change, since it is considered part of providing professionally responsible information. However, many of the remote services programs in this study are in states that have encouraged and fostered the development of limited scope representation law practices, which are an "alternative service" more likely to result in successful outcomes. The court remote services programs help callers understand the difference between legal information and legal advice, and through that conversation help the consumer understand why a lawyer would matter. This is a decidedly different approach than just telling someone to get a lawyer

Dr. Deborah Chase of the California Judicial Council's Office of Families, Children and the Courts conducted an analysis of available data on the cost of legal services hotlines and telephone-delivered self help services in 2003. The document was in internal report and was never published or placed on line. She found that legal services hotlines average fewer than 10 calls per staff member per day. The national domestic violence hotline, whose function is to make referrals to local programs, handles 20 calls per staff member per day. A court-sponsored forms hotline in Maryland at the time handled 20 calls per staff member per day. The court self help center in Alameda County, California and the Alaska Family Law Self Help Center handled 40 to 44 calls, respectively, per staff member per day. The major reason for the low productivity of legal services hotlines was the requirement for legal services lawyers to conduct financial eligibility screening and conflict checks for every call.

-

¹⁶ A copy is available from the author.

Summaries of the Eight Study Site Programs

This section of the report provides a general overview of the history, components and processes of each of the eight study sites. Following the program descriptions is a matrix of program characteristics to help users of this Resource Guide identify programs with characteristics they might wish to adopt. A spreadsheet describing each program's characteristics in greater detail is available on the Self-Represented Litigation Network's Remote Services webpage at www.srln.org/node/841/srln-brief-remotes-services-srln-2016, which includes this Report and all supporting materials, as well as many additional resources.

Alaska Court System Family Law Self-Help Center

www.courts.alaska.gov/selfhelp.htm

Begun in 2001, Alaska's Family Law Self Help Center was the first statewide self help service program in the nation, providing all self help assistance by telephone throughout Alaska. It is responsible for the state website and forms. It is a model for effective outreach and inreach activities.

Beginning in 2001, the Alaska Court System has provided self-help assistance exclusively by telephone and a comprehensive website with forms and plain language information. Alaska has a huge landmass with very few roads and many isolated communities. Alaska has led the nation with people accessing the internet from any location (home, work, public access). SRLN Coordinator, Katherine Alteneder, who served as the Founding Director of the Alaska's program, envisioned a system that could serve all Alaskans, by combining the examples of the Senior Legal Hotlines with comprehensive web-based information imagined for the LawHelp network. While it would be possible to provide walk-in services in Anchorage, Fairbanks, and possibly a few other locations, the system she created treated all Alaskans equally by providing universal phone-based services.

The Self Help Center has an attorney director, two other attorneys who spend significant time on the early resolution programs in multiple locations, and four non-lawyer facilitators. One of the facilitators is fluent in Spanish and another in Tagalog. All staff work 37.5 hours per week. The Center operates from 7:30 am to 6:00 pm Monday through Thursday. The phone service is not available on Fridays; the staff uses that day for training programs, early resolution calendars, and local workshops.

The program handles approximately 7,000 calls annually. Calls are randomly assigned to the next available staff person, except for Spanish and Tagalog speakers. Once a staff person interacts with a customer, s/he handles subsequent calls from that customer if s/he is available. This is accomplished by giving out the staff person's direct line for call back purposes. While facilitators are responsible for answering the general helpline number, if there is a lull in helpline calls, s/he will answer her direct line and respond to that caller but otherwise lets the direct line go to voice mail and return the message later during another lull. Personal relationships with customers are maintained to take advantage of the staff person's prior knowledge of the case, of the customer, and of services previously provided. Staff obtains information from the customer by mail, fax, or email; court files are available physically from the court in Anchorage and will be scanned and sent by other courts upon request. Center staff are able to listen to court hearings for persons they have assisted, either live as they take place or by listening to the audio recording (available through the internet) at a later time. Staff sends follow up information and materials by email, fax, mail, or by leaving packets at the clerk's counter in Anchorage for Anchorage customers.

The FLSHC has built and maintains an extensive website structured around frequently asked questions. The website has many plain language forms; the list of forms is 26 pages long. The website also includes short videos on most of the website content. The staff uses co-browsing to help customers navigate the website. Follow up emails often refer to the website; the program does not otherwise have "canned" responses for use in email messages.

The FLSHC has a tradition of making evidence-based programmatic decisions. It conducted early experiments comparing the time to serve customers face-to-face and by phone. It did an experiment on the use of voicemail, using the results to decide not to give customers the option to leave voicemail messages on the helpline. If they do not get through, they are forced to call back until they do.

One of the facilitators analyzes the monthly toll-free phone bill — which shows the caller's phone number for calls that are not completed as well as for those that are. She determines how many of the persons who do not get through on one occasion ultimately succeed in reaching the Center. The data shows that within a one year period, 58% of callers got through on the first attempt, 23% were not successful on their most recent attempt but have spoken to a facilitator at some point in the past and 19% did not make contact with the Center from the same phone number. The program maintains data for each call on the demographics of the caller and the nature of the services rendered.

The Alaska program works very closely both with judges and court staff and with external justice partners, including the legal aid program, domestic violence advocates, child support enforcement, custody investigators, the local bar, and libraries, and does outreach to over 200 Alaska Native tribal entities. Judicial officers and their assistants regularly contact the Center's staff to ask them to contact litigants. Many judges routinely refer people to call the Center for assistance by including information in orders, providing the Center's business cards in the courtrooms and orally during court proceedings. The Director serves as an informal advisor to the judges on issues regarding self-represented litigants. The Alaska court system has non-lawyer magistrates in several small communities. The FLSHC Director provides training at statewide conferences and individualized assistance to these judicial officers as well as to the state's general jurisdiction judges.

The FLSHC maintains close relationships with the bar. The Director will take calls from lawyers and answer their questions. Lawyers regularly use the FLSHC website and forms. The Alaska bar is unique in its embrace of limited scope representation. The bar has a separate section for unbundled service lawyers. The bar association maintains a list of unbundled attorneys by practice area and tasks they are willing to perform at their identified range of fees. It also includes FAQs about unbundled legal services on its website. The FLSHC Director interacts with section members, attending statewide bar section meetings of the family law, unbundled services, ADR and military sections, and provides occasional training.

The Center maintains a close relationship with the clerical staff in the Alaska court system. The Director devotes roughly 30% of her time to training. The judicial branch has recently purchased learning management software called SmartU to help with the training process. The Director participates in annual conferences and teleconferences with all the clerks of court and occasionally posts questions or notifies them of new information on an email list serve connecting them all together. Those processes enable the exchange of requests and suggestions for improved assistance to SRLs and to the courts; she also notifies them of new self-help forms, videos, website content and programs. The FLSHC emphasizes quick responses to requests from the clerks to let them know that their input has been taken seriously. The goal of this intensive interaction is to create a partnership with the clerks in which they will provide as much assistance as possible to persons coming into the courthouse, calling the FLSHC for help, and making appropriate referrals to the FLSHC for assistance beyond what they are comfortable providing.

When a customer appears unable to absorb the information provided, or to use the resources provided by the Center, staff ask if s/he has a friend or a service provider who could help her/him with the process. If not, staff reaches out to local court staff, a case worker, a tribal

entity, a library, or another resource to serve as an intermediary. Center staff are happy to facilitate three-way dialogue between the customer, service provider or friend and the FLSHC.

The Director serves as a senior member of the staff of the Alaska Administrative Office of the Courts and as lead access to justice staff for the Alaska judicial branch. She researched a simplified domestic relations trial process that judges and most of the commenting attorneys supported; this ultimately resulted in a recent Supreme Court rule that provides for simplified courtroom procedures when both parties agree to have an informal divorce or custody trial or post-judgment modification hearing. The Center manages the Early Resolution Program (ERP). In ERP, Center staff attorneys review newly filed contested divorce and custody cases and the parties' history of all previous court cases. They do a two level triage: first to determine if the case is likely to resolve according to screening criteria and second, whether it would benefit from the assistance of volunteer unbundled attorneys, a mediator and/or a settlement judge. The objective of the program is to match litigants up with the appropriate legal resource to help them resolve the case as quickly as possible without trial, with most cases fully resolving on the day of the ERP proceeding, with FLSHC staff assisting with the preparation of final documents to make that possible. The program has benefited greatly from collaborations with the Alaska Pro Bono Program who recruit, train and coordinate the volunteer attorneys, the court's mediation program that provides trained mediators, the Child Support Services Division and the court custody evaluators, both of whom are available as resources to the parties at the hearings.

Alaska, the most mature remote self help services program in the nation, is also the most comprehensive, in the sense of its responsibility for its own website and forms, in its extensive outreach to the bar and multiple other state and local entities, and its impact on how self-represented litigants are treated in the courts and in the courtrooms.

Butte, Lake and Tehama Counties, California SHARP Shared Services Model

The SHARP program is unique in the nation in linking self help assistance in multiple, widely separated, California counties. It is also unique in its extensive use of videoconferencing to deliver workshops and to enable staff physically located in one county to provide face to face service in another location.

The Self Help Assistance and Referral Program in northern California provides an example of regional cooperation in the delivery of services to self-represented litigants – both face-to-face and remotely. Three northern California counties (Butte, Lake and Tehama), separated by as

much as 100 miles, employ the same person to serve as Family Law Facilitator and Director of Self Help Services.¹⁷ The three county area has one large community, Chico, and many smaller towns and agricultural communities. The Family Law Facilitator employs staff who serve all three counties and four separate courthouses in those three counties. Two of the staff members are fluent Spanish speakers; their services are used in all three counties.

The SHARP program is unique in our eight sites in its use of videoconferencing. Originally the program used a Polycom system which proved expensive – not only in the original cost of the videoconferencing equipment, but more importantly in the \$1,000 per month cost of maintaining T1 telephone lines to support the transmissions. SHARP experimented with Skype – an online videoconferencing service widely used for personal video exchanges – and found that its quality was not sufficient for business use. Zoom – a more recent cloud-based online videoconferencing service – has proved to be both inexpensive (\$10 per month) and of high audio and video quality.

SHARP uses the videoconferencing system for a number of purposes. The primary use for the videoconferencing system is for small and large workshops conducted in multiple court locations simultaneously. A single staff person can provide content and individualized assistance to workshop participants who are physically present in multiple locations. Workshops are provided for child custody and visitation, child support, and guardianship. The second use is for ongoing communication among the multiple court self help offices and staff. The video system remains on during all business hours and provides a means for the supervisor to monitor activities in all locations and for staff to communicate with and obtain assistance from each other. Another use is for staff in one location to remotely assist self-represented litigants in another location. The most frequent use is to provide Spanish language assistance throughout the three county area. The video system is also used when there is a mismatch between staffing resources and user needs – a staff member physically present in a different location can help with a large workload somewhere else. Review of documents is accomplished by holding the document up to the video camera or scanning the document into the computer and posting it on the screen.

A challenge for use of the videoconferencing system is noise. Having the system on during all business hours produces a significant level of background noise. But more importantly, when the system is used for customer interactions, it will pick up and transmit background noise from the local office environment, making it difficult to hear the primary communicators. SHARP has had to dedicate separate office space in each location, with doors that can be closed to keep

32

¹⁷ Over the history of the program, one other county participated for a period of time. The SHARP program is open to extending its shared services approach to other small, rural Northern California counties.

out unwanted sound, to ensure the effectiveness of one-on-one communications. The issue was addressed for use in the workshops by securing more than one Zoom account and using the lines separately. The video workshops also require the availability of dedicated space.

The survey data collected by the SHARP project for this study suggests that the average time for a videoconference customer interaction is 22 minutes.

SHARP also provides walk in and in person appointments in all of its locations and remote services using the telephone and AskSHARP email. It can obtain documents from customers by mail or fax and information about a person's case from the case management system in use in two of the three counties. Case information is not available electronically from the third county. SHARP uses Wave Viewpoint call center software that queues calls for all locations and produces statistics on phone use, average call times, drops, etc. The system has a caller ID function that enables staff to know who is calling (although that information is not maintained as part of the program's records). Calls average 2 to 2.5 minutes in length. The most frequent service provided is to schedule a workshop or individual appointment, with the latter dependent upon the urgency of the situation, such as at risk children.

SHARP uses the Viewpoint phone system to "hot desk" phones, allowing staff to access their own personal extension from wherever they are assigned in Butte County. A staff person whose phone extension is located in the Chico SHARP can use a phone in the Oroville criminal division, and the "hot desking" application allows that person to use the phone as their own. Viewpoint allows users to take their personal phone extension number with them to whatever desk or site they use. This allows staff to work flexibly among the sites in Butte County. Unfortunately, Lake and Tehama counties do not have the Viewpoint phone system.

SHARP also uses a line queue system called QMATIC. The QMATIC system allows litigants to take a number when they arrive and then they can sit comfortably while waiting for their number to be called rather than standing in line. The QMATIC system allows the SHARP staff to record how many litigants they served, and records whether the litigant was there for a previously made appointment or need immediate help with emergency paperwork. It allows management to determine how long each litigant is waiting for service, how long it took to complete the task they are working on, and allows SHARP staff to transfer a litigant to the clerk's window for filing their completed papers.

SHARP has 7 fulltime and 4 "extra help" staff (a total of 8.5 FTE) – 2 lawyers and 9 who are not lawyers. It is projected to complete over 29,000 interactions with customers in 2015.

The Family Law Facilitator attends court calendars dedicated to self-represented persons ("Pro Per Calendars") and assists with proactive management of SRL cases. She and the staff interact extensively with the court staff in the two of the counties. The judge in the third county considers such interaction as inconsistent with the role of the judge as supervisor of the court staff. There is no current interest from the bench in the use of videoconferencing for court appearances, although all three counties allow telephonic appearances for status conferences.

The "W Drive" is a unique resource developed by SHARP for employee training and daily use. It consists of a series of resources for staff in analyzing situations presented by SHARP customers. The W Drive also guides staff in interviewing customers to ensure that all information important for assisting the customer is elicited. The W Drive includes:

- Powerpoints
- Hypotheticals
- The processes for each legal case type, including the forms in chronological order for that process
- Sample completed forms, including financial information worksheets
- Trial readiness statement, with explanations of preclusion implications for leaving out witnesses or exhibits
- Complaint forms
- Next step instructions tailored to the processes used in each county
- Bench guides
- Flyers and other information for inclusion in public information racks
- Ethical rules
- How to deal with jail mail
- Scheduling guidelines
- Decision trees for every legal topic
- How to use the court's technology
- Frequently asked questions
- Instructions and forms concerning birth certificates
- Spanish instruction translations

Chico, California has a unique legal assistance program based at California State University, Chico. A faculty-supervised, student run Community Legal Information Center (CLIC) assists 15,000 clients a year in areas of consumer protection, community outreach, jail law, disability rights, environmental issues, family law, housing law, student law and juvenile rights, penal law, misdemeanors, tickets and traffic, women's law and worker's rights. CLIC is a unique resource for SHARP's remote services program — an alternative to coming to a SHARP location for inperson assistance.

The situation of court customers in Clearlake, on the southern edge of Clear Lake in Lake County is illustrative of the needs of rural court users to obtain greater services remotely. Lake County's self help center is located in Clearlake, where the county's least affluent citizens live. The main courthouse is located in Lakeport, a more affluent community on the northern shore of the lake, many miles and a long bus ride away. All documents must be filed in Lakeport. Until the court implements electronic filing, residents of the county have to travel to Clearlake to obtain self help services and then travel to Lakeport to file documents.

Idaho Judicial Branch Court Assistance Office and Idaho Legal Aid Services

The Idaho Court Assistance Officer program, begun in 1999, provides face to face and telephone self help assistance throughout Idaho. Over the years it has worked closely with Idaho Legal Aid Services, a national leader in the use of technology, which has developed a virtual law office application to interact with clients in remote areas of the state.

The Idaho site visit included programs of the Idaho state judiciary and Idaho Legal Aid Services, the unified statewide legal services provider for Idaho, known for its effective use of technology.

The Idaho Court Assistance Office (CAO) Project was implemented as a pilot in 1999 and made permanent in 2000. It was one of the first statewide programs to assist self-represented litigants in the United States. The design of the program is to have Court Assistance Officers, who may or may not be lawyers, assigned to each of the state's seven judicial districts. They visit the different courthouses within the district on a regular schedule, meeting with SRLs seeking assistance. They work closely with the local bar, arranging workshops conducted by volunteer lawyers. The work of the formal Court Assistance Officers is supplemented by staff of the Clerk of Court in each county. In the last reporting year, the CAO program had 11 FTE, 4 of which are lawyers and 7 are non-lawyers.

The business model of the CAO program begins with maintenance of a state website with information on a variety of civil legal topics, with an emphasis on family law matters where the largest numbers of SRLs appear. The courts initially worked with Idaho Legal Aid Services to use its Law Help Interactive document assembly program to deliver interviews for frequently used court forms. The LHI software uses the answers to the interview questions to populate the appropriate court form, which is then generated for the user's review and printing. In the last

two years, the CAO program has begun to implement an independent forms development and delivery process using Tyler Technology's "Guide and File" application.

In working with SRLs, the first priority of the CAO is to link a litigant with a lawyer. The CAO program has developed a list of Idaho lawyers who are willing to provide limited scope representation to SRLs. This list is posted on the Supreme Court website and used by CAOs to link SRLs with lawyers. If a lawyer is not available or not desired, the CAO provides assistance in the form of standard information, forms and instructions packets (at nominal cost), forms review, and other assistance as requested and appropriate. The CAOs use the nationally recognized distinction between legal information and legal advice, providing the former but not the latter. Legislation authorizing the CAO program provides that services provided by the program do not constitute the unauthorized practice of law.

In addition to in person face-to-face services, Court Assistance Officers also offer services over the phone, by text message, by email, or, in some districts, by videoconference. The Idaho surveys also reported one instance of the use of videoconferencing as the service delivery modality. In the last reporting year, the CAO program provided assistance with 63,745 matters, 77% of which were in the area of family law. The next three case types in which assistance was provided were landlord/tenant, small claims, and name change. The program's data reports the nature of the service rendered, as well as significant demographic information on the users; but it does not record what percentage of the services are delivered in person or remotely. When services were provided by phone, staff computed an average phone call length of 3.92 minutes. The average time recorded for Idaho for the study surveys was 18.6 minutes per interaction.

The CAO program has ambitious plans to make use of its statewide website as an intake portal, triaging the needs of customers and referring them to information and forms on the website when possible, or to other services when those materials do not meet the customer's needs. This model will allow more centralization of the program's resources. The program envisions providing services by phone, email, and live chat and linking with the state's planned e-filing system for forms review.

Idaho Legal Aid Services provides legal information and forms on its website – http://www.idaholegalaid.org. It has seven staffed offices throughout the state which operate hotlines for seniors and for domestic violence. It has also implemented a centralized online intake process.

This project was particularly interested in the program's Virtual Law Office (VLO), implemented in 2014, which uses the Clio application. The VLO is designed for persons living in rural areas, persons who are homebound or have limited mobility, persons with unusual work schedules, and mothers with young children. It offers a full scope of legal services and interactions delivered remotely through its Clio application together with phone, GoToMeeting web conferencing, or videoconferencing communications options.

The Clio application requires that the client be technically competent, or have a trusted family member, friend, or other person available to provide technical assistance. To use VLO for a case, the ILAS lawyer creates accounts for the client and for the matter. ¹⁸ Clio provides a secure internet environment for information sharing, requiring the client to have a password protected account, validated by an email account. Once the Clio account is set up, the client receives notification of new messages or materials in her or his Clio account via email. The VLO allows the lawyer and client to upload documents, which can also be shared with a lawyer colleague. The lawyer can send documents to the client for review and signing. Communications can be conducted by live chat using the Clio VLO, by a web conference, by videoconference using Zoom or Skype, or by phone. The client's access to the VLO account ends when the case is closed.

The ILAS VLO has been tested and is fully operational. It has not been used extensively. At the time of our visit to Boise, the application had been up for six months and had only been used four times. It is not clear why it is not used more frequently – whether there are few instances in which remote communications are necessary and worthwhile or whether lawyers and/or clients are reluctant to use a new technology-based product.

Maryland District Court Self Help Center

A leader in the development of face to face self help services in its general jurisdiction courts, Maryland in 2011 developed a statewide telephone and chat self help service for persons using its limited jurisdiction courts. That service has recently been expanded to provide remote services to general jurisdiction court users. Unique among the study sites, Maryland contracts its remote service delivery to Maryland Legal Aid and authorizes its staff, all of whom are members of the Maryland bar, to provide legal advice to persons seeking assistance.

37

¹⁸ One of the awkward features of integrating Clio with ILAS's Legal Server case management system is that a "matter" in Clio is not the same as a "matter" in Legal Server, which uses a precise Legal Services Corporation definition of the term. An additional awkwardness arises from the need to enter case documents separately into Legal Server and Clio for VLO cases. .

Maryland was one of the first states to provide services to self-represented litigants. The state's law schools led the early efforts in the state by creating walk in clinics staffed by law students. In the early 2000s, the state judicial branch provided funding for Family Law Self Help Centers in every circuit court – the county based general jurisdiction trial courts. That program did not extend to the District Courts – the statewide limited jurisdiction court responsible for handling landlord/tenant, small claims, limited civil and contract matters, debt collection and peace and protective orders. A number of the District Court and circuit court locations provide space for Protective Order Advocacy Representation (POARP) programs and similar programs operated by local domestic violence providers. These programs provide assistance in filing a petition for protection, court accompaniment and full representation in final protective order hearings. In December 2009, a pilot District Court Self-Help Center was opened at the Glen Burnie location, in Anne Arundel County. The Center was implemented through a contract with Maryland Legal Aid, which took complete responsibility for staffing and operating the Glen Burnie program. Following an extensive evaluation of that program, which documented its effectiveness, ¹⁹ the Judiciary decided to expand and relocate the phone and live chat services, originally located in Glen Burnie, to a statewide call in center located in Annapolis – also operated by Maryland Legal Aid. A second walk-in District Court Self-Help Center was opened in 2015 in Upper Marlboro in Prince Georges County.

The Maryland Courts Self-Help Center uses the same phone system, Verizon ACD call center technology, that Maryland's statewide Traffic Processing Phone Center uses. The Traffic Processing Center is staffed by 13 full time employees, with 2 Spanish language operators, who answer all traffic ticket inquiries, including calculation of fine amount, arrangement for fine payment, and changes to court dates statewide.

The Self-Help Center uses web-enabled software from Live Person to support its live chat service operated through the statewide website.

In providing services through its contract with the state judicial branch, Maryland Legal Aid does not conduct means testing to screen its clients for ability to pay for services. Services are provided to anyone who calls, except for businesses, attorneys, and persons calling on behalf of others.

Maryland's self help services are unique in the nation in that they provide legal advice as well as legal information. This is true of the Family Law Self Help Centers in most of the Circuit Courts as well as the walk in and remote services provided for District Court cases. Maryland has adopted the ABA's Model Rule 6.5, which provides that in the absence of actual knowledge of a

38

¹⁹ Administrative Office of the Courts, Evaluation of the Glen Burnie District Court Self-Help Center (April 2012)

conflict, court or non-profit-based programs that provide short-term limited legal services to a client without expectation by either the lawyer or the client the lawyer will provide continuing representation, are not subject to the ordinary rules requiring conflicts checks. Consequently, a lawyer providing services in this context in Maryland is barred from representing a client only if s/he has actual knowledge of a conflict of interest. In operating its self-help services, Maryland studiously avoids recording any name or other personally identifying information that would enable self-help lawyers to identify such conflicts. If attorneys have actual knowledge of a conflict, the second persons requesting assistance will be referred to an alternate provider. Although funded by the courts, program attorneys are employed by an independent entity and are not supervised or managed by court personnel. In other states, the distinction between contracted and employed staff would not be considered to affect the propriety of a court official providing legal advice to a party. In a few Maryland courts, notably Montgomery County, self-help attorneys are employed directly by the court. There is no lawyer-client relationship between court personnel and the parties using the self-help center in most locations. Where the attorney is a court employee, the attorney's legal work is not supervised by a judge or other court official.

When a person calls the Self-Help Center, callers are asked to choose from a number of selections to identify whether they are calling for traffic, family or other civil case types. Callers are told that the Center also does not assist businesses, lawyers, or persons who are represented by a lawyer. Callers are also informed that services are provided by Maryland Legal Aid, that only limited legal services are provided, that Maryland Legal Aid will not provide representation beyond the advice provided during the call, and that callers will be expected to provide demographic information.

Our observation of interactions with callers in the Maryland Self Help Center convinced us that empowering self-help lawyers to provide legal advice provides Maryland users with more information than the standard "legal information" provided elsewhere in the United States. The provision of an analysis of the application of the law to their situation and of strategic and tactical advice is advantageous to self-represented litigants. Lawyers providing this sort of brief service always face the challenge of eliciting enough information from the client to provide professional responsible legal advice; during our short time of observation, we were not uncomfortable with the advice given to self-help clients in the Self-Help Center. Maryland Legal Aid provides malpractice coverage for its attorneys working on the Self-Help Center contract.

When a caller uses the live chat function to contact the Self-Help Center, staff draw upon a library of "canned" response information in crafting a written answer to the query posed.

When advice is given by phone, Self-Help Center staff may send a follow up email if it is deemed necessary.

The Self-Help Center will give advice on trial preparation including how to organize a case, what is cross examination, and how to introduce documents into evidence. Staff do not otherwise attempt to instruct on the rules of evidence. They do refer callers to applicable videos and they attempt to alert callers to situations in which they will find themselves at a distinct disadvantage if they appear in court without an attorney. Although Maryland has had some rules changes, they have not developed any specialized dockets to address the unique needs of SRLs.

In fiscal year 2015, which runs from July 1, 2014 through June 30, 2015, the Self-Help Center provided assistance to 11,651 phone callers and 6,320 chat inquirers, 5,568 walk-in users, and 2,176 emails with five FTE of staff, all of whom are Maryland lawyers. The study survey data showed that self-help staff spent an average of 6.7 minutes answering chats and 15.1 minutes answering phone calls.

Maryland's public website for legal information, referrals, forms, and self-help is called the People's Law Library (www.peoples-law.org), and is currently maintained by the Maryland State Law Library, a court-related agency of the Maryland Judiciary. The site is supported by volunteer contributors from Maryland's non-profit legal services providers, bar associations, law schools, judiciary, and state government, as well as the broader pro bono legal community.

The site features over 350 articles covering a wide variety of substantive legal topics, and over 100 articles related to court procedure, alternative dispute resolution, the legal research process, and statewide forms. The site links to a document assembly tool for custody, visitation, and child support forms, set up by Maryland Legal Aid. The site links from each translated article to versions in Spanish, Chinese, Korean, or French, as available, and allows searches of the database in each language.

The site provides links to email and online chat with law librarians at the Maryland State Law Library and attorneys at the Maryland Courts Self-Help Center. The site is also home to the searchable statewide Guide to Legal Services in Maryland, a statewide legal clinic calendar, and various legal referral sources.

The People's Law Library uses the Drupal open source software and incorporates responsive design to deliver content formatted for whatever device (e.g., smartphone) is used to access the site.

The site has been developed to allow a fully linked, but non-searchable copy to be downloaded to computers without internet access, including those in prison and jail libraries.

The Maryland State Law Library funds one full time staff position, and three annual 10-week fellowships, to maintain and develop the People's Law Library site and its information, to recruit and manage volunteers, and to train individuals throughout the state on how to use the site.

The Maryland Judicial Branch recently expanded the Self-Help Center in two ways. First, it added virtual delivery of services in family law, expungement, mandamus, and juvenile cases – in effect, expanding the Center to provide remote services for Circuit Court as well as District Court cases and users. The second was to expand the hours of service. Phone and live chat services are now offered from 8:30 a.m. to 8:00 p.m. Monday through Friday. The District Court hopes to expand the number of District Court walk in self-help centers so that there are walk in facilities in every region of the state. The next two regional centers are planned for the rural Western part of the state and on the Eastern Shore. The judicial branch also plans to incorporate the services of pro bono attorneys, using call center technology to refer screened calls to pro bono attorneys in addition to the Center's staff lawyers. Finally, the Judiciary recently created the Maryland Law Help app which provides mobile access to many of the services available through its website, as well as buttons that enable users to click to chat or call the Self-Help Center.

The Maryland Courts Self-Help Center does not engage in the same sort of outreach efforts that remote services units in other sites conduct. The Center staff have no relationship with Maryland judges and court staff, other than through the Access to Justice Department of the Administrative Office of the Courts, which is responsible for overseeing their contract. They do not provide training to court staff or other entities. Their own training is provided by Maryland Legal Aid and is not a part of the judicial branch training effort. The Center does use a variety of approaches to publicize services. It makes referrals to social services and makes an effort to remain knowledgeable about other services available to its clients. However, it does not interact with those agencies in a planning or problem solving mode.

Minnesota Courts Self Help Center

In 2007 Minnesota created statewide remote services self help center to provide to all Minnesotans the self help assistance that was available to residents of Hennepin County. The center provides telephone, email, and document review services. It is the most efficient program studied in terms of the number of matters handled per staff member.

The Fourth Judicial District Court in Hennepin County, Minnesota established one of the first self help centers in the country. Over time, it expanded to include two different sites – a family law self center in the Family Justice Center housing the family courtrooms, and a civil self help center in the Hennepin County Government Center – the main courthouse – which provides assistance with all non-family civil matters, including civil harassment orders. The court also created a separate Domestic Abuse Service Center focused exclusively on helping persons with domestic violence protective orders.

Walk in self help centers have since been developed in Ramsey County (St. Paul) and in one county of the Tenth Judicial District (Anoka County). But most of the state of Minnesota is rural and the size of the courts has not supported the establishment of a statewide network of walk in self help centers.²⁰

In 2007, following Alaska's example, Minnesota established a statewide telephone and email based self help center, drawing on the expertise developed in Hennepin County and located in the Hennepin County Government Center. Every courthouse in Minnesota has a public SRL Workstation and direct phone line connecting court users with the statewide remote self help services. These facilities were also made possible in part with federal IV-D funds and a grant from the State Justice Institute. The statewide center can also be reached from any telephone or email account.

The statewide center provides information on all civil legal subject matters. Half of the inquiries it receives pertain to family law matters. No other topic constitutes more than 5% of its contacts. Topics, other than family law, on which it receives a high number of calls include conciliation court, judgments, landlord-tenant, general civil, orders for protection and civil harassment restraining orders, probate, criminal expungement, criminal, guardianship/conservatorship, name change, forfeiture, car title, traffic, juvenile, and adoption.

The statewide center makes extensive use of the Minnesota Judicial Branch website developed and maintained by the state IT staff. The Minnesota Judicial Branch maintains both the statewide homepage and the Fourth Judicial District Homepage. During 2014, the state homepage had almost 1.2 million visitors. The Fourth Judicial District homepage had almost 1 million visitors. The booklet, "What to Expect as a Self-Represented Plaintiff or Defendant in a Civil Trial (without a Jury)" was downloaded over 100,000 times in that year. The Minnesota

42

²⁰ Minnesota's legal aid programs have created a network of law library-based self help centers throughout the state.

State Self Help Center controls the content of most of the "Help Topics" presented on the statewide website.

Minnesota has a unique resource in a non-profit entity named Call for Justice, LLC which trains 211 operators to make appropriate legal referrals; its 22 training sessions have been videotaped so that they can be shown to newly hired 211 staff or used for refresher training. Call for Justice has also developed and maintained a "cheat sheet" listing, describing, and providing contact information for every legal service available in the state by county.

Minnesota has devoted considerable effort to providing forms using a document assembly format. It uses I-CAN!, Pro Bono Net's LawHelpInteractive, HotDocs, and A2J software to develop and present interviews that users complete to produce court approved forms. I-CAN! is the preferred approach for dissolution cases.²¹ With funding from the Legal Services Corporation and the State Justice Institute, the state has developed a pilot e-filing application for restraining orders.

Today the Minnesota Courts Self Help Center is staffed with four fulltime staff, all of whom are lawyers. The staff provides legal information, not legal advice, following the standard national understanding of the distinction between them, which is codified in Minn. R. Gen. Prac. 110.

The Minnesota Courts Self Help Center provides three types of services – phone, email, and forms review. The telephone service is available from 8:30 am to 3:00 pm Monday through Friday, except for court holidays. It uses Cisco Agent Desktop call center software²² that costs roughly \$100 per month per staff member in license fees. Total phone service fees (phone and internet costs for the Center and the SRL Workstations located at 87 county courthouses) are about \$1200 per month. The software provides a recorded message for the caller explaining the services provided by the center and the disclaimer that the service does not provide legal advice. It also supports a phone tree to basic legal information by topic. Phone calls are then assigned to the next available staff member. Rarely, staff will prepare a follow up email to provide the information in written as well as oral form. They use a list of standard content maintained in Outlook for constructing follow up emails.

The program does not record the name of the caller or any caller demographic information other than the county in which their case is filed or will be filed, and the subject matter of the

²¹ The Legal Aid Society of Orange County, California, developed I-CAN! and supported its use by other jurisdictions for a number of years. LASOC has recently decided to terminate its support for I-CAN! implementations.

²² At the time of our visit the program was exploring other call center software options.

caller's question. The Center provides the same services to persons from the three counties with local walk-in self help centers as it does to those without such facilities.

The program does not currently have a bilingual staff member, but periodically relies on the bilingual skills of staff located at the walk-in centers, or ATT Language Line, for interpreter services. The local walk in self help centers do recruit and maintain bilingual staff, particularly in Spanish and Somali. The Center will include bilingual capabilities in future job announcements.

The email program responds to questions transmitted by email making use of the same Outlook list of standard answers by topic, if available, for responding to common questions. The staff inform users that they respond to emails within three to four business days. Minnesota legal services, working collaboratively with the court system, have also deployed a statewide email pro bono question-answering service, modeled on one created in Tennessee. Emails are maintained on a central queue which pro bono attorneys access and respond to when they have time available.²³

The third service provided is forms review. A dissolution form can be reviewed through I-CAN! if the user provides the Center staff with the information needed to locate it; comments are then sent to the user by email. If I-CAN! was not used, the customer can send an email with the forms attached for review. Form review can also take place using Team Viewer co-browsing software. The program will not review LegalZoom forms. A form review generally takes 25 to 30 minutes. By contrast, the Family Law Self Help Center at the Family Justice Center in Minneapolis sets one hour interviews for the purpose of reviewing certain family law forms.

Minnesota's call center collects data on the average length of calls, which has now dropped to four minutes. This is the lowest of the eight study sites. The probable explanations for its short call time are:

- the availability of resources to which to refer callers, including the state website, forms, and a sophisticated child support video developed using Camtasia software presenting an enhanced powerpoint broken down into six chapters;
- the availability of standard email follow up messages maintained in Outlook by topic and the rare preparation of such messages as a followup to a phone call;
- the high proportion of calls classified as "simple" under this study's complexity protocol;

_

²³ www.mnlegaladvice.org

- an explicit policy that the purpose of the program is to provide legal information not general social services information;
- the program's policy not to provide copies of paper forms, referring callers to local court offices or libraries to obtain them;
- a culture focused on providing an immediate first step in addressing the question posed

 knowing that the user has the option to call back for additional assistance,
 for instance, telling the caller to locate a form and instructions on the website, follow
 the instructions provided, and call back for further help if needed;
- a sense that we did not perceive in other programs that the staff are helping people
 who are representing themselves and are therefore responsible for pursuing their own
 cases; the self help staff exists to provide information but not to assume any part of the
 responsibility for moving the case forward; and
- the level of experience of the staff.

Data for the services provided over the past seven years by the statewide self help center are shown below. The second table contrasts the self help services provided locally in Hennepin County with those provided statewide during 2014.

Services Provided by Statewide Self Help Center

	-	-	
Year	Emails	Phone calls	Forms Reviews
2008	1074	3487	
2009	1313	10124	
2010	2168	14882	241
2011	3753	17769	1402
2012	4355	18333	1444
2013	3879	18676	1228
2014	3842	18354	1320

Services Provided by Hennepin County and Statewide SHCs

Hennepin County Government Center SHC	Hennepin County Family Justice Center SHC	Statewide SHC
19,950	16,306	23,383
All walk ins	of which	of which
	13,743 were walk	18,354 were calls

ins and	3,709 were
2,563 were calls	emails
	1,320 were forms
	reviews

The statewide self help center maintains close relationships with local court staff. It does not interact with judges to the same extent, although it does provide training for new judges and judges' law clerks in Hennepin County on working with SRLs. The center does not ask callers if they are represented by a lawyer. Nor do they ask if the caller is a lawyer. A lawyer caller will be given the same legal information as any other caller.

One particularly interesting and unique aspect of the Minnesota program is the close interaction between the statewide center and the local self help centers in the Fourth District in Hennepin County. While these different self help staffs work for different employers, they nonetheless serve rotations in each other's programs.

While we were in Minnesota we were also able to observe the operations of the Minnesota Court Payment Center (CPC) call enter, a statewide unit assisting callers with questions about traffic or parking citations, including negotiated payment plans. The business hours are Monday – Friday from 8:00 am – 4:15 pm with standard shift schedules for breaks and a daily staff meeting from 4:30 – 5 pm. The work at the CPC is operationally centralized, but the seven staff and their supervisor work from home offices throughout Minnesota and western Wisconsin. Call center staff are expected to meet daily productivity metrics including number of calls handled and average call length. At the time of our visit Minnesota's two largest county courts, Hennepin and Ramsey Counties, had not yet transitioned their work to the CPC. Since our visit, Ramsey transitioned in July 2015 and Hennepin transitioned in January 2016. The CPC call center uses several systems making the call handling easy for the call center clerk and convenient for the caller. The systems that are integrated include the Courts' case information system (MNCIS), an interactive voice recognition (IVR) system, and an automated call distribution (ACD) application that distributes an incoming call to the next available call center clerk based on who is logged in to the ACD and available to take a call and who has been "idle" the longest. The ACD provides a real-time dashboard that identifies, among other things, who is logged in, how long a call is taking, the number of calls in the queue, how long a call has been waiting to be answered, etc. It also includes an alarm that alerts staff and leadership if the number of calls stacking up in the queue exceeds the set limit. The ACD has a feature that permits a supervisor to log in to and assist with a call, listen to a call for training and coaching purposes or take over a call from the clerk. All calls are recorded. Staff communicate using email or Microsoft Lync (Skype for Business) which provides instant messaging, audio and video calls, and online meetings. The team trains together by selecting classes from a portfolio of

training modules provided by SkillSoft© with shared lessons and discussion occurring in the staff meetings. Once per year the staff from the CPC organization schedules a face-to-face meeting and training session. The court pays for the computer equipment, telephone and headset and reimburses staff for their dial tone and home internet business connectivity; the staff designate a work space in their home and provide office furniture.

Montana Court Help Program and Montana Legal Services Association www.courts.mt.gov/selfhelp www.mtlsa.org

The Montana Judicial Branch provides self help services in six layers to the various parts of the state, making extensive use of AmeriCorps volunteers. Montana Legal Services Association has organized itself to provide legal aid services remotely through the use of "minicams" on its laptops and through a "telelaw" project in which tablet computers were placed in accessible locations throughout the state to enable clients and potential clients to make face to face remote contact with MLSA lawyers.

Montana was chosen as a project site because of the assistance provided to self-represented litigants from both the Montana court system and the Montana Legal Services Association.

The Montana court system is centrally funded but decentrally managed. Clerks of court are locally elected officials and their offices are county funded. Montana's self help services program reflects the state judicial branch's decentralized culture. The Montana Supreme Court initiated a Court Help Program in 2007 through mini-grants awarded to local courts and bars interested in creating programs in their jurisdictions. A number of communities have created self help centers and they vary significantly in their organization, staffing and service approaches.

The current Montana Self Help Assistance landscape consists of a series of six layers of service. The Administrative Office of the Courts has a staff person who is responsible for stimulating and overseeing the statewide process. The Montana Judicial Branch participates in the state's AmeriCorps program. There are 18 AmeriCorps positions statewide. The judicial branch has eight of the AmeriCorps positions. They are all trained by Montana Legal Services Association (MLSA) and supervised by the programs to which they are assigned. The six service layers are:

• A statewide information website and forms development and management program overseen by the Montana State Law Librarian.

- Telephone, email, and in person assistance provided by the Reference Librarian of the State Law Library and an AmeriCorps volunteer located in the State Law Library. These services are available during the hours that these staff are present in the State Law Library. People can email a question using the "ask a librarian" line on the webpage and receive an answer within a few hours.
- Local Self Help Law Centers in Cascade (Great Falls), Flathead (Kalispell), Gallatin (Bozeman), Missoula, and Yellowstone (Billings) Counties. The staffing of these programs, their hours of operation, and their mode of operation all differ from place to place. One or two AmeriCorps volunteers are assigned to each of these programs.
- "Circuit rider" outreach efforts conducted from each of the local Self Help Centers. For
 instance, someone from the Flathead County program visits other locations in its county
 and in Lincoln County in the northwest corner of the state once a month. Staff from the
 Cascade County Self Help Center travel through four northern counties monthly. The
 hours that self help staff will be present at each courthouse are posted and schedules
 are placed on the internet.
- "Omniboxes" of forms and instructions are placed in remote courthouses that are not included on the outreach circuit. Clerks of court are instructed in the use of the materials and encouraged to distribute them. The boxes are visited periodically and the forms restocked as needed.
- Court-based computer terminals accessing MontanaLawHelp and the court's website.

All of the Court Help programs are limited to the provision of legal information, not legal advice. They answer questions concerning all civil case types, principally family, consumer debt, landlord/tenant, name change, guardianship of a minor, and step-parent adoption. Data from the state coordinator shows that Montana's Court Help Program statewide consisted of 3.25 FTE employees and 8 AmeriCorps volunteers and assisted 16,000 Montanans during the last annual reporting period. 82% of this assistance was provided face to face and 15% was provided by phone.

Montana has an Access to Justice Commission, staffed by an Administrative Office of the Courts employee. The Montana Supreme Court adopted what are considered model rules authorizing limited scope legal practice, but the bar has not yet fully embraced the concept. The state bar referral program does have a separate list of lawyers willing to provide limited scope representation. The state has a modest means panel of lawyers who agree to handle cases screened by MLSA for \$60 per hour and a maximum retainer of \$1500.

Montana Legal Services Association is an example of a statewide legal services organization organized and managed to maximize the reach of its resources to all residents of the state.

While MLSA has offices across the state, it functions as a single law firm for the poor. The intake process is centralized, uses standard intake criteria for the whole state (with the exception of more lenient acceptance criteria for tribal members) and incorporates an online application process; online applications now exceed phone applications. The intake process is completed by a telephone call back, which includes conflicts screening. Cases are assigned to lawyers based on case matter expertise rather than the geographic location of the client.

The program has a long term interest in creating and providing forms for SRLs. It now has a good set of plain English forms and is in the process of enabling their creation using document assembly software. The Montana bar has been somewhat resistant to both MLSA's efforts to develop forms and to the courts' efforts to create self help centers.

While many legal aid cases are given representation, MLSA provides brief "HelpLine" services – by phone or in person – to roughly 5000 persons each year who do not meet MLSA criteria for representation. Sixty thousand persons visit the MontanaLawHelp website each year.

MLSA lawyers all have minicams on their laptops and regularly use them for GoToMeeting sessions with each other and with third parties. MLSA lawyer laptops can also connect to the court system's Polycom videoconferencing system. Montana conducted an experiment with the use of videoconferencing for attorney conferencing and court appearances. The results were negative except for appearances in uncontested cases and for mediation. The Polycom system remains available to MLSA lawyers but they prefer the GoToMeeting process.

Using a Legal Services Corporation Technology Innovation Grant²⁴, MLSA recently conducted a "telelaw" project which involved placing tablet computers in five locations around the state to facilitate secure videoconference communications with MLSA clients across the state. Tablets were located in homeless shelters to connect with veterans, in a housing authority to connect with clients with eviction cases, and in a domestic violence shelter. Only the latter proved successful. Clients had no difficulty using the devices. However, it was difficult to get clients to travel to the sites where the equipment was located and the sites had difficulties with security for the device. Only the DV shelter tablet remains in use. The DV device allows confidential access to MLSA lawyers without disclosing the location of the client.

²⁴ See http://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig.

MLSA obtained funding to place dumb terminals in courthouses with an internet connection to MontanaLawHelp to which court staff could send people seeking legal information. The court now owns the computers, but MLSA continues to provide support for them.

MLSA funds a staff person to develop and administer pro bono efforts. One such effort is the planned replication of the Tennessee online pro bono effort in which persons seeking legal information and advice send an email to the program, which is then answered by volunteer lawyers who scan the list of emails and choose which to answer. Questions that have been pending for a long time turn red on the list; MLSA is the backup for questions that remain unanswered.

MLSA has an ingenious outreach program. Its business cards are placed at clerk of court offices, Social Security offices, Libraries, Public Health offices, and lawyers' office waiting rooms. Its earned income tax credit return preparation service is online as Montana Free File and is advertised on TV public service announcements. It distributes bar coasters with "did you know?" legal situations on them. It trains court staff on the services it provides. Its "Legal Tip of the Week" program is sent to all news media in the state, including public access TV stations, and is tweetable.

Orange County, California Self Help Services

The Orange County, California Superior Court is an urban court serving 3 million people with the motto "On line not in line." The court has pioneered a number of electronic services, culminating in the upcoming release of the first Customer Relations Management (CRM) software application in a court.

Orange County, California has a population of over 3 million people. It has more people than four of the states involved in this remote services study (Alaska, Idaho, Montana, and Utah). As a very large court operating in an era of scarce public resources, Orange County Superior Court has adopted a strategy of converting from a courthouse-centric services delivery system to a distance services delivery model. The court anticipates that in the future the majority of court users will prefer to conduct most of their interactions with the court on-line; that it can use its relationships with its Legal Services Provider Partners to handle a significant portion of needed face-to-face interactions, and that the court's physical, court-based self-help centers will become the provider of last resort – rather than first resort, as at present. The court's motto is "On-line not in line."

The Orange County Superior Court currently delivers remote services through telephone; email; e-filing; its self-help website; an on-line small claims triage application; and videos available on-line. It is planning to add a customer relations management software application to this mix in early 2016. However, the bulk of its interactions with self-represented litigants still take place at its courthouse-based self-help centers.

Several years ago the court had a dedicated call center to handle telephone inquiries primarily relating to criminal and traffic cases. That service fell victim to budget cutting which reduced the court staff from 1900 to 1425 employees (a 25% staff reduction) over a period of 4 years. Today, phones are answered by self-help counter staff when they are not busy serving customers face to face. The court has a toll-free automated information phone line for criminal and traffic customers; only those callers whose cases are on a collection plan are prompted to speak to a collections representative. At the Self-Help Centers, out of state and incarcerated callers requesting procedural assistance and forms are allowed to leave voicemail messages and the staff uses procedural form letters to accompany the form packets which are mailed out. The court estimates that its average call length is 3 to 5 minutes.

A great deal of information is delivered through the court's website, which provides access to forms and self-help form packets. Forms are vetted on the Transcend website to ensure that they are in plain language. The forms process is being integrated with the court's e-filing system to address the needs of self-represented users. An earlier adopter of interview based software to help litigants complete often complicated legal forms, the court began using Ican! – developed by Legal Aid of Orange County (LASOC) as a public service in 2001 and used for the creation of many family law and other forms in 7 states. The court added HotDocs for use in workshops and clinics beginning in 2008 and developed its own "SmartForms" generator with a two year roll-out from 2010-2012 to create document assembly interviews for family law and small claims actions.

Orange County was a pilot county for mandatory e-filing and now requires e-filing for attorneys filing in all probate and civil cases. During the pilot, e-filing became optional for self-represented litigants pursuant to state rules of court, but is encouraged by the self-help center staff. The e-filing system in Orange County currently has fourteen e-filing service providers (thirteen private and LASOC), who can directly file with the court. A clerk reviews and approves the submission before accepting the filing into the case management system. The court does not currently mandate e-filing in family law cases; however, the SmartForms were designed to be e-filed. LASOC is using these forms in its dissolution clinics and e-files directly from their offices. LASOC is also an e-filing vendor for SmartForms. The court will be implementing the Tyler Odyssey case management system for family law and juvenile cases in December 2015

and is currently exploring options for e-filing in these case types. It is possible that one of the court's e-filing vendors will create a niche e-filing service for SRLs when e-filing is introduced for family cases. The statewide judicial branch continues to support local courts in developing and enhancing HotDocs programs. For example, the domestic violence forms are being updated following input from courts, including Orange County. The program includes an enhanced automated "check box" approach to completion of the declarations required to accompany an application for a domestic violence order of protection.

Another on-line tool the court uses is "Pubble" – which uses a Wikipedia approach to answering on-line procedural questions which are general in nature. The program is an automated Q&A application that selects an answer based on key words contained in the question. Staff monitor the application to ensure the relevance of the answers provided. However, Pubble eliminates the need for staff to review and respond to individual email inquiries.

In collaboration with other southern California trial courts, Orange County built and provides an on-line tool to help persons with a small civil claim choose options for how they wish to address it – by preparing a demand letter, by initiating negotiations with the other side (with references to available ADR services), or by filing a small claims complaint.

The court has created a library of videos that it delivers through YouTube. One of the most popular is How to Start Your Own Divorce.

The court uses a predictive dialer application to provide reminder calls about upcoming hearings and appearances for Procedural Assistance Calendar settings.

In December 2015, the court, using a judicial administration intern, the Court distributed surveys to determine the level of interest in remote services from persons attending four court calendars. Of the 63 persons who completed surveys, 81% would have liked to be able to select the date and location of a court-sponsored workshop online, 84% were interested in receiving email updates and video guides, and 86% were interested in being able to manage and track their cases online. Interest was highest among English speakers, persons with higher educational attainment, and persons who had to miss a day of work to attend court. The report found that 92% of the respondents had internet access, though there was a gap of 26% between English- and Spanish-speaking respondents. Spanish-speakers were more likely to use a smartphone to reach the internet and English-speakers to use a tablet.

Orange County's most ambitious undertaking to get customers on-line rather than in line is the implementation of the first court-based Customer Relations Management system, built on the

Microsoft Dynamics platform. Construction of the system has required the hiring of an outside contractor to customize Dynamics to address the court's needs. The CRM system will provide every court customer who chooses to register with her or his personal My Court card. When entered online or swiped at the courthouse, it will provide court staff with a history of the customer's previous interactions with the court. The first phase of this multi-phased project is set to launch in early February 2016 and will allow customers to schedule workshop appointments on-line, view information based videos, and make visits to the self-help centers more efficient since use of the My Court card will give the staff person instantaneous information about the current stage of the case and the next step needed to move the case towards resolution. The Self-Help staff decided to begin the project by developing the family law module since that case type has the most SRLs. A My Case Tracker module will provide case progress information to the customer in the form of a list of the steps required to complete her or his case; each step will be accompanied with a radio button that will turn green when that step has been completed – providing the SRL with an easily accessible picture of the current status of the case. Subsequent phases will be integrated with the case management system to provide litigants with information about filings in their cases. The system's plans also include on-line referrals to LASOC services and expansion to other case types.

The court is dedicated to proactive management of self-represented cases, having the goal of resolving them completely at the first court appearance.²⁵ The Self-Help staff play an integral role both in planning the case management processes and delivering the services that implement them. The court has a highly successful trial readiness conference settlement program involving volunteer attorneys and SHC attorneys to resolve 86% of contested divorce cases. The SHC staff have been involved in developing the court's informal trial process, which accepts all evidence presented by the parties. Judges using this approach are able to conduct up to six SRL family trials per day.

The court is not investing its resources exclusively in remote access technology. It has recently opened a new Superior Court Service Center to serve the 600,000 residents who reside in the southern part of the county. The new Center currently offers a full-time Self-Help Center and part-time filing and payment windows for criminal and traffic cases. As resources permit, it there will have full-time filing windows in all case types. The court also plans to have domestic violence clinics at the Center.

²⁵ The California Judicial Council has adopted Rule 5.83 of the California Rules of Court, Family Centered Case Resolution, implementing AB 939 enacted by the California legislature in 2010. The rule requires California trial courts to proactively manage family law cases.

The court has invested in NEMO Queue – a system that enables persons coming into the court to choose the service s/he wants and puts her or him in queue for that particular service. The software allows supervisors to monitor the wait time for persons seeking each type of service and to transfer staff as needed to meet the demands of the moment.

The court also works closely with justice system partners to engage them and their resources in delivering the best combined services to customers. The Department of Child Support Services (DCSS) has a fulltime staff person located in the Lamoreaux Family Courthouse to handle internal child support referrals. DCSS also funds a full-time Assistant Family Law Facilitator who is stationed at the DCSS offices in order to facilitate completion of court forms when the case cannot be handled administratively. The local bar provides volunteer lawyers for settlement calendars.

The court created an Elder Abuse Task Force and, following its recommendation, funded an Elder Abuse Temporary Restraining Order Clinic beginning last year. LASOC contracts with the court to oversee the twice per week clinic for preparing and responding to requests for temporary restraining orders in elder abuse cases and funded LASOC to develop an elder abuse HotDocs module for use in the clinic and available to the public through the court website. Two law schools and a major law firm provide assistance for these clinics.

LASOC also received a grant from the State Bar to develop an incubator program to train recent law graduates who have not found a job requiring a law degree to develop the skills needed for a successful limited scope representation practice.

The Orange County Superior Court holds an annual "academy" for community leaders to familiarize them with the services provided by the court. This past fall, Self-Help did outreach to the private Bar, the LBGT Center of Orange County, and UC Irvine Law School to help coordinate a Name Change and Gender Marker Clinic in order to fill a gap in services. The clinic began in October and was held at the LBGT Center. It is staffed by law students supervised by volunteer attorneys and the Self-Help Center provides information and referrals.

Utah State Courts Self-Help Center

http://www.utcourts.gov/selfhelp/contact/ www.utcourts.gov/selfhelp

Utah's State Court Self-Help Center is the most recent statewide remote services program, providing assistance to persons with any legal issue in any level of court within Utah. Services are provided through telephone, email, and text messaging and help persons use Utah's OCAP forms document assembly application.

The Self-Help Center is a free service of the Utah State Courts to help people understand their legal rights and responsibilities and to help them resolve legal problems on their own if they cannot afford a lawyer or choose not to hire one.

The Self-Help Center is a virtual center that provides services through a toll-free telephone helpline, email, text and the court's website. The center's staff speak English and Spanish and are able to access court interpreters if someone speaks another language. The center helps people with cases at all court levels—justice, juvenile, district and appellate—and responds to questions about all legal issues.

The Utah State Courts responded to the ever-increasing needs of people without lawyers by establishing the Self-Help Center in 2007. The Judicial Council had established in 2006 a standing committee on resources for self-represented parties whose strategic plan recommended the development of a virtual center. The center began with one staff attorney providing help by phone and email in two pilot judicial districts—one urban and one rural. The initial effort relied on public access computer terminals and dedicated phone lines installed in every courthouse in the pilot districts. This approach was quickly abandoned once it became apparent that SRLs preferred to contact the center from their own phones and computers and at their own convenience.

In 2008 the Judicial Council determined that those pilot efforts warranted continuation and expansion to a statewide effort. Because of the economic downturn, it wasn't until 2012 that the Utah State Legislature enacted a bill with a fiscal note that established the center as a permanent, statewide program of the courts located within the state law library.

The Self Help Center is staffed by a full-time director and five staff attorneys who each work 30 hours per week with benefits. Because of the part-time nature of the employment relationship, the program functions on 4.75 total FTE. The salary is similar to that of entry level court law clerks. Four of the six attorneys speak Spanish and all services are provided immediately in English and Spanish; other language services are available upon request and are provided by court interpreters.

The center is open six hours per day, four days per week. New staff members receive training before they respond directly to incoming contacts. They perform very well after three to six months and reach full capacity after a year's experience, even though training is ongoing.

Training sessions and presentations by other court staff and representatives of government and non-profit agencies around the state occur at weekly staff meetings.

The Utah center provides assistance on all case types in all levels of court in Utah. These calls include some aspects of criminal cases, including traffic offenses, post-conviction relief, expungement, sentence reduction, and appeals. It is center policy not to receive voicemail messages from patrons. Individualized call appointments are rare but do occur. For instance, if a caller needs a language interpreter other than Spanish or needs help completing an online form, then staff will arrange for follow-up telephone appointments. Staff attorneys do not provide users with their direct phone numbers for follow-up calls. Incoming communications are handled by the next available staff member regardless of a staff member's prior personal involvement with a caller. However, if necessary under the circumstances, a staff attorney will follow-up with a patron if the patron needs special help; in addition, staff attorneys discuss communications among themselves to understand the patron's needs from prior contacts with the center.

Center staff do not recite a standard disclaimer message with callers, emailers or texters. The center's webpage does explain what center staff can and cannot do. Staff explain limitations on the service provided – for instance, that they do not provide legal advice – if the issue arises during the course of a communication. The staff use a written information log form on which they record pertinent information during a call, such as the caller's email address. These logs are shredded later. Staff conduct a short Survey Monkey survey at the closure of the communication to collect some data on the user and to record the services provided. Most callers receive a follow up email crafted for that occasion. The program does not, as a matter of policy, maintain standard or "canned" email responses. It emphasizes the need for each email response to address the specific needs of the individual caller. Staff do copy materials from the state website for inclusion in emails, and include links to forms and sections of the website, and to other relevant resources, pertinent to the user's inquiry.

Calls average 15 to 20 minutes in length although individual calls have lasted as long as an hour and a half or two hours. The policy on call length is to take the time you think the person needs. The phone system records the number of calls received. The program misses about 3 calls for every call it answers. The program does not track what percentage of persons who persist in trying to reach the service succeed or fail. However, customer service surveys indicate that most people get through by phone the same day they try calling, or they get through within a day or two.

The program also accepts inquiries by email and text message²⁶ in English and Spanish. All incoming emails and texts are responded to immediately and certainly on the same day. At one time the program accepted live chat, but stopped that service once it found that these conversations became unduly repetitive because patrons were using chat in addition to the other more effective access tools. Email and text offer alternative access points. Some patrons use them if they cannot get through by phone but others prefer to communicate electronically.

The program maintains data on the means by which the service was rendered (e.g., phone, email, text), whether the contact is from a member of the public or a special audience (lawyer, judge, court staff), the Utah judicial district, state or country from which the inquiry originates (8% of calls are from out-of-state and .3% are from a foreign country), the language of the contact (6% are in Spanish and the remainder in English), the name of the staff member who handled the contact, and whether a referral was made to other legal resources (roughly one third get such a referral).

The chart below shows program's data for services provided over the life of the program.

Fiscal Year	Number of	Average Contacts per
(July 1 to June 30)	Contacts	Day
2008	830	9
2009	1992	12
2010	3205	16
2011	6135	31
2012	8236	42
2013	15666	80
2014	16383	84
2015	18,173	91

The next chart shows the breakdown of the contacts by method of service for FY2015 (July 1, 2014 through June 30, 2015).

	Calls	Emails	Texts	Total
Contacts	12,202	3,818	1,735	18,173
Average Contacts per day	61	19	9	91

57

²⁶ Text messages are handled through Google Voice which renders a character-limited version of the text message on a staff member's computer screen and returns the message to the user's smartphone as a return text message. The Google Voice application does not accept attachments, such as photographs of documents, attached to or transmitted as text messages.

Judges and court staff contact center staff through their direct email, telephone, or internal Google chat. Staff do provide information to lawyers who contact the center. Staff provide training for court staff and for justice system partner entities upon request. Staff have been actively involved in efforts to institute proactive case management of domestic cases involving self-represented litigants and are currently staffing pro se domestic case calendars in Salt Lake County.

The Self Help Center director communicates regularly with clerks of court and participates in their meetings as appropriate.

Judges and staff have high praise for the Self-Help Center and its staff and note particularly its depth of knowledge of a number of legal processes, for which there is considerable public need.

The Utah center makes use of a number of resources maintained by the Utah judicial branch. The center director works with the State Law Library Director and senior legal counsel for the courts on the drafting of forms and webpage materials. Center staff provide extensive input on (but do not manage) the judicial branch website. The website includes substantive content concerning a wide variety of legal case types and resources. The Utah State Courts also offer an online form production system, OCAP, whose forms process was one of the first document assembly processes implemented by a court system. It is now in its fourth generation, using a HotDocs platform. The system was designed to generate all the forms required for all stages in the court process at the same time. This feature makes it difficult for court users to navigate for the purpose of generating a particular document. The OCAP system is being redesigned to change this feature. Court filing data show that half of all domestic case pleadings were created in OCAP.

The State Law Library, located in the main courthouse of the state in Salt Lake City, trains and supports University of Utah undergraduate interns who help patrons complete OCAP programs and other court forms. The interns meet with patrons in person or by phone. When necessary, a court interpreter participates.

E-filing is mandatory for lawyers. In the future, self-represented litigants who use OCAP will have the option to e-file.

Some judges throughout the state allow persons to appear telephonically for procedural hearings; some evidentiary hearings have been conducted telephonically. Videoconferencing has been used only for criminal proceedings. Utah law allows for informal custody trials.

The court website provides extensive information and forms for all levels of appeals and the appellate courts are embarking on a pilot project to recruit pro bono lawyers to handle prescreened SRL appeals.

The Self-Help Center staff provides as much help as possible and makes appropriate referrals for people who need further legal advice, representation, or help from other sources. Referrals are made to other legal services providers, free legal clinics, and to other government agencies (e.g., the Utah Labor Commission for wage claims) and non-profit social services agencies (e.g., the Moab Valley Multicultural Center). The center maintains active relationships with legal services agencies, the Utah State Bar, other government agencies, and relevant non-profit agencies to assure a referral process that is as seamless as possible for self-represented persons.

The Self-Help Center is a partner with two remote services delivery programs that utilize volunteer lawyers. Utah Legal Services (the state's only Legal Services Corporation grantee) recruits and trains volunteer lawyers in domestic cases and schedules those lawyers to act as lawyers of the day. The Self-Help Center staff work with callers and if the caller needs legal advice, the caller is immediately transferred to the on-call lawyer of the day. The staff also email directly to the volunteer lawyer any relevant case dockets and pleadings. The goal is to expand the Lawyer of the Day program to include all legal matters.

In addition, the center works with a non-profit program, Timpanogos Legal Center, in central Utah, to make appropriate referrals to the program's virtual document preparation clinic. Both of these volunteer lawyer programs aim to provide legal advice and document preparation by remote services delivery and the Self-Help Center is an essential partner in making sure people get to these services.

Business Process Issues

Scope of Remote Service Delivery Programs

Four of the eight sites studied deliver remote services statewide. California's self help services are county-based, but in northern California a single family law facilitator serves self-represented litigants in three counties. In Idaho and Montana, self help services are primarily face-to-face, supplemented with telephone services that are mostly local in nature.

All of the programs studied now provide services to persons for all court levels in the state. Five of the eight programs provide assistance with all civil case types. Utah provides services for criminal as well as civil cases.

Scope of Remote Services Delivery Program

		CA	CA	Idaho				
	Alaska		_		Maryland	Minnesota	Montana	Utah
		SHARP	Orange	CAO	-			
Geographic reach	Statewide	Three non- adjacent counties	One county	Statewide	Statewide	Statewide	Statewide	Statewide
Court level(s)	All	Unified trial court	Unified trial court	All	General and limited jurisdiction	Unified trial court	All	All
Case types	Family, guardianship conservator- ship, step parent adoption, forms for probate and appellate practice	Child support, paternity family, DV, civil harassment, small claims, guardianship, name change, expungement	All	All	All	All	Civil matters with an emphasis on family law	AII

Remote Services Clientele

A few of the programs screen out represented persons and a few refuse to assist lawyers. The majority of the programs make no such distinctions.

All but one of the programs identify court staff as clients; all but two identify judges as clients. Six of the eight programs have dedicated phone lines reserved for use by judges and court staff.

Remote Services Clientele

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Unrepresented persons								
Screen out represented persons								
Court staff								
Judges								
Attorneys								

Key	Yes	Direct line for judges/staff	No

Goals of Remote Services Delivery Programs

Goals of Remote Service Delivery Programs

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Provide								
information								
Provide legal								
advice								
Make								
referrals								
Spot legal								
issues								
Spot future								
issues								
Provide forms								
Fill out forms								
Create								
individualized								
filings								
Feedback								
loop for court								
operations								
Proactive case								
management								
SHC training,								
support, and								
supervision								

Key	Yes	No

The programs studied have five consistent goals – to spot legal issues (seven of the eight sites), to spot future issues, to make referrals, and to provide information and forms for the issues spotted. Five of the eight will fill out forms for persons who cannot do so themselves. Only two will create individualized forms for self-represented litigants. Five have a goal of providing feedback to improve court operations. Four assist in providing proactive case management to ensure that cases move expeditiously through the court process.

Two of the programs have unique goals. The SHARP program in northern California uses its videoconference program to train, support and supervise its own staff in multiple locations. And Maryland is the only state that provides legal advice through its court-based service

Seven of the eight court-based programs studied follow the standard understanding of the distinction between legal information and legal advice – providing only the former and not the latter. This means that they limit the services rendered to providing general substantive and procedural information. They tell users their options but do not provide strategic or tactical advice. They explain how to bring matters to the attention of the court but do not venture opinions about the efficacy of bringing a matter or the likely outcome of doing so. The standard disclaimer states that the program does not give legal advice, does not treat information provided by the inquirer as confidential, and will provide similar assistance to opposing parties.

Maryland departs from this practice, authorizing its court staff and contractors, when they are lawyers, to provide brief legal advice to persons seeking assistance. They create a lawyer/client relationship for the purpose of the brief interaction, but advise the client that they are not providing representation beyond the immediate interaction. The advice never includes advocacy on behalf of the client in the form of an interaction with the other party, an agency, or a third party. But it may include preparation of a short document for filing with the court. The lawyer will not provide advice to a person requesting assistance if s/he knows of a conflict but the program avoids recording information that would inform a lawyer of the existence of a conflict. In this way, the program is able to provide service to almost every person seeking help, including multiple parties in the same case or matter.

Service Methods Supported

Among the eight sites studied, all of the remote service delivery mechanisms described at the beginning of this guide are in use except for a statewide triaging portal. Telephone services are universally available. They are supplemented by email, text, chat, videoconferencing, and cobrowsing in multiple locations. Utah abandoned chat because it found it too burdensome.

Maryland delivers roughly half of its services using chat. Only Utah is currently supporting service delivery through text messaging.

Methods of Remote Service Delivery Used

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Telephone								
Email								
Chat								
Text								
Video								
Small claims triaging application								
Customer Relations Management application								
Co-browsing								
Document review								
Classes/workshops								
Jurisdiction-wide face-to-face								
Some face-to-face								

Key	Yes	Automated	Internal	No	General	Limited
		response	use only		jurisdiction	jurisdiction

Three sites use co-browsing, in which the service provider – with the user's permission – assumes control of the user's computer to show the user how to use a website or form, or, in a few cases, to complete a form for the user.

Six sites have processes for reviewing documents prepared by a user using remote services. Half of the sites provide classes or workshops using remote services.

Video conferencing is used in only two of the sites. Orange County, California has two programs not available elsewhere – a specialized small claims triaging portal and a customer relations management software application.

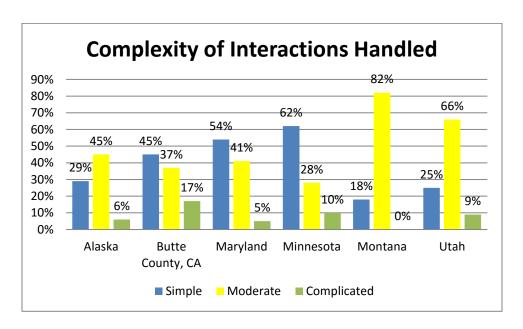
The two California sites provide the option of face-to-face services for all users. Alaska has no face-to-face services. The other sites have some face-to-face services in one or more locations within the state.

Complexity of Interactions Handled

During an early meeting of the site representatives, the study developed a typology for rating the complexity of interactions with SRLs. It consists of three complexity levels:

- Simple -- I did not need detailed knowledge about the case to provide the service requested
- Moderate -- I needed to collect detailed information about the case, but could do so during the interaction and complete the service requested during a single interaction
- Complicated -- Needed more detailed information than I could obtain during the interaction. Not able to complete the service requested during this interaction.

Seven of the eight sites collected data on the complexity of their interactions during the surveying process. Idaho's data is not included in this table because it consisted of feedback to legal services advice as well as Court Assistance Officer assistance. The data for six sites shows a remarkable diversity in the relative complexity of interactions.



Minnesota had the highest percentage of simple matters. Montana had the highest percentage of moderately complex matters (82%); this may be explained by the fact that many of the Montana callers were handled by an AmeriCorps volunteer, who would have had to look up information more than a highly experienced staff member in Alaska (45%) or Minnesota (28%).

However, Utah also had a high percentage of moderately complex calls with its all-lawyer staff (66%), compared to Maryland's all-lawyer staff (41%). Butte County, California (17%) had the highest percentage of complicated matters. Montana reported no complicated matters.

Features of Telephone Services

None of the statewide programs use voicemail and callbacks. They have found that their programs are much more efficient simply answering the calls that they are able to take during regular business hours.

Maryland and Minnesota use recorded messages on their call center software to deliver standard messages on the limitations of services rendered to all callers before they are connected to a staff person. Alaska has staff give the disclaimers at the beginning of each call. Utah, the two California sites, Idaho, and Montana explain the limitations of service as appropriate in the course of providing assistance.

In one of the statewide programs – Alaska – staff give out their direct line phone numbers so that users can reconnect with the same staff person for every call. Three of the four programs that do not have statewide remote services staff use the same system. But the other three statewide systems do not.

Chat, text and email assistance constitute their own follow-up. The Orange County, California use of the Pubble software delivers an automated response to email questions.

All eight programs provide some form of follow-up to telephone calls. Most will send forms and information by mail when necessary; Minnesota does not. The staff of the Utah Self-Help Center construct a unique follow up email for every person assisted. Alaska staff send follow up emails for most calls. Other programs provide email follow –ups when staff deem them needed or appropriate. The Maryland and Minnesota programs use "canned" content, edited as appropriate by staff, to construct follow-up emails. Minnesota sends fewer follow-ups than the other sites – only when the staff deems it necessary.

Seven of the eight programs provide staff with direct electronic access to the register of actions for all cases. They also let self help staff look at case files – electronically if the state has made the transition to electronic documents.

Seven of the eight sites have multilingual staff.

Telephone Service Features

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Use of voicemail								
and callbacks								
Give out direct								
phone number so								
customer can								
return to same								
staff member								
Automated								
disclaimers/service								
limitations								
Verbal								
disclaimers/service								
limitations								
Screening	*							
questions								
Access to court		***						
docket								
Access to court								
documents								
Caller can								
email/fax/send in								
documents								
Individualized								
follow up								
Individualized								
follow up using								
canned messages								
Record caller						**		
demographics								
Record services								
provided								
Record personal								
data on caller								
Multilingual								
personnel								

	Key	Yes	Yes –	One of three	No
		163	Electronic	sites	INO

^{*} marital status, Alaska native identity, member of military

^{**} periodic demographic surveys

^{***} in one of three locations

Supporting Services

An essential component of remote service delivery is adequate supporting services – websites, forms, videos and other instructional materials, social media and remote interpreter services. These resources are accessed directly by the public. In all eight sites, far more people access the website than contact the self help service program. Websites are also used by remote self help staff to access information to pass on to persons requesting it.

The Alaska Family Law Self Help Center built and maintains the Alaska family law website and develops its own forms. Orange County builds and maintains its own systems. In Idaho, Minnesota, and Utah the state court system develops and maintains websites and forms, with input from the self help programs in their states. In Montana, those are functions of the State Law Library. In Maryland, the Peoples Law Library, which is now a component of the Maryland State Law Library, performs those functions.

Supporting Services

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Website								
Forms								
Multilingual								
Plain language								
Document Assembly								
E-filing								
Glossary								
Instructional videos								
Interactive education								
Passive education								
Social media								
ATT Language Line								

Key	Yes- Maintained by Remote Services	Yes – Maintained elsewhere	Partial	No

Performance Measures and Data Collection

All eight of the programs treat interactions with self-represented persons as anonymous, even though they are not confidential. No program maintains the names and contact information of persons assisted. No program records telephone or videoconference conversations. No program retains emails, chats, or text messages as permanent records. When staff record data during the course of a telephone call, the notes are shredded. The main reason for this practice is to align recordkeeping practices with the legal nature of the relationship – there is no lawyer/client relationship established; consequently there is no reason to maintain information about the caller. A benefit of this practice is to minimize the possibility that self help staff will become embroiled in litigation. A few SRLs are vexatious litigants with a propensity to bring suit not only against the person with whom they initially have a grievance, but also against all persons involved in the legal process when it does not produce the relief sought. If staff do not record personal information about persons assisted, they are usually able to avoid being called to testify about their interactions with those persons because they have no means of recalling what transpired during the interaction.

Orange County, California will represent the opposite perspective when it introduces its Customer Relations Management application in early 2016. That process focuses on maintaining detailed information on each court services user as a valued court customer and maintaining and using multiple forms of contact information to ensure regular communications between the court and each SRL court user. Its system will carefully protect the privacy of that contact information. Statewide triaging portals will enable users to choose anonymity or self-identification. If the portal user wishes to use the portal to establish contact with a service or entity to which s/he is referred by the portals triaging analytics, s/he will have to enter personal information and agree to its disclosure to the referral entity.

Programs typically record information on the numbers of persons served, the method of service, the type of service rendered, and the subject matter/case time for which the service was rendered. Several of the programs conduct surveys at the end of the interaction to record demographic data on the person served; this survey is, of course, voluntary. Maryland collects this demographic information at the beginning of its process. Such surveys are rarely conducted in conjunction with services provided through email, chat or text messaging.

Minnesota no longer collects demographic information on every caller. Instead, it conducts demographic surveys for short periods of time to determine whether its user population is changing over time.

Programs using call center software maintain complete data on the number of calls received, the number of calls answered, average hold time, average call time, and numbers of abandoned calls.

Self help metrics

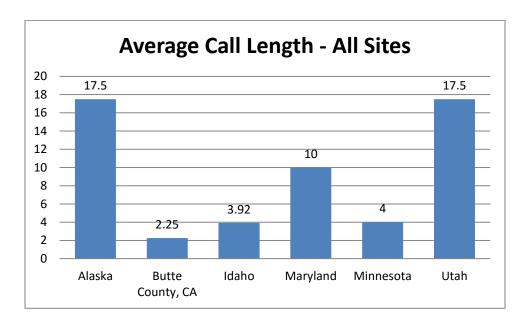
	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Number of								
calls								
Number of								
calls not								
answered								
Caller								
demographics								
Services								
provided								
Referrals								
made								
Referral								
sources								
Caller success								
with the issue								
raised in the								
call								
Mini studies								
of operations								

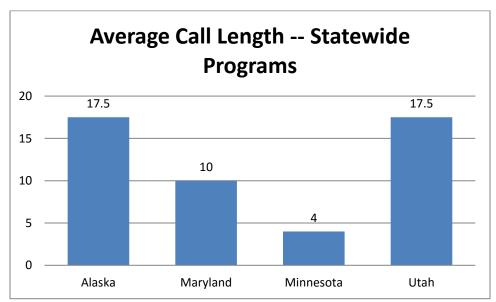
Key	Yes	Child Support/Paternity Only	No

Average Interaction Time

The average length of telephone calls varies greatly from program to program. The following chart shows the data collected during this study. The data for Maryland, Minnesota and Butte County, California are from their call center software. The data for Alaska and Utah is derived from program director estimates that telephone calls in their state average between 15 and 20 minutes. The data for Idaho was based on a sample of calls in one county over the course of a week. We do not have reliable average call time estimates for the other programs. We present two tables for this information – one for the six sites for which we have information and the other limited to the four statewide programs.

Based on the SurveyMonkey feedback survey data, it appears that chat responses in Maryland take roughly half the time to complete as telephone calls. We do not have any comparative data for the time to respond to email messages.





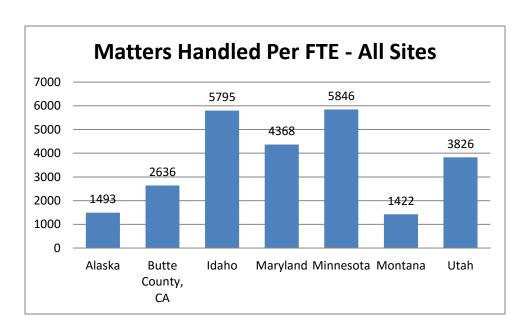
The time to provide specific services also varies from place to place to an inexplicable degree. The Hennepin Family Law Self Help Center, a walk-in self help center, sets aside one hour appointments for the purpose of conducting a document review in a family case. The Minnesota Self Help Center conducts document reviews, including reviews in family cases, in an

average of 25 to 30 minutes. The Orange County, California Self Help Center conducts walk in document reviews in 15 minutes.

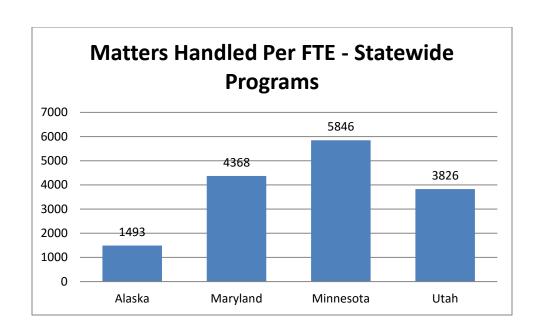
Interactions per FTE

The relative productivity of the remote services programs also varies greatly, to some extent as the converse of the average time spent per call.

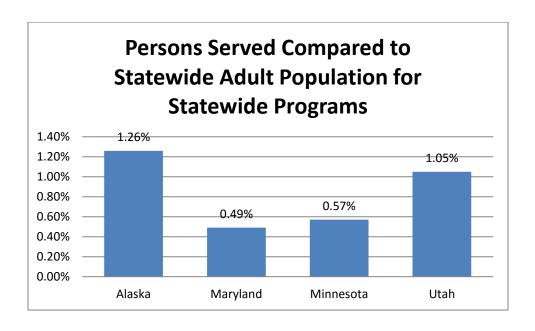
The contrast between Montana and most of the other states shows the productivity advantage of remote services delivery. The bulk of Montana's self help services are delivered face to face, and often by sending staff to remote locations for that purpose. Minnesota is able to deliver over three times as much service per FTE through the use of its highly efficient remote services program. Idaho has a primarily face to face program similar to Montana's but its data shows a much higher level of productivity. The study was not able to determine the reason for the dramatic difference between those two states. The Alaska program is anomalous. It conducts all of its services by telephone and has the longest average time per call. It also devotes the most resources to website and forms development and maintenance and to outreach and inreach activities.



The next table provides the matters handled per FTE data only for the four statewide programs.



The final table shows the extraordinary reach of each of the four statewide programs by comparing the number of persons served with the adult population of the state. It is not accurate to state that Alaska serves over 1% of the state's population annually, because it serves some persons more than once. But it is a fair measure of the statewide impact of the program to compare it with the size of the adult population. The impact is almost as large for Utah. While the numbers for Maryland and Minnesota are only half as large, they still represent a very significant impact for their states' much larger populations.



Multilingual Issues

In Montana, language issues are inconsequential because only 2% of the population is not fluent in English. Orange County, California presents the opposite extreme, with an automated traffic court information website translated into a half dozen languages. Several sites (Alaska, Orange County, California and Utah) focus on recruiting a multilingual staff and using interpreters for additional languages. Others use court interpreters and ATT Language Line to ensure that they are communicating effectively with non-English speaking SRLs. In Minnesota, the statewide self help center relies on local court staff in Hennepin County to provide interpreter services, if available; otherwise, it uses ATT Language Line. Orange County has special ASL carts with specialized equipment (including video screens) for use with persons requiring American Sign Language.

Multilingual outreach is an important component of the remote services programs in Alaska and Utah – connecting persons with language challenges with local resources who can help them prepare forms, understand instructions and procedural information, and navigate an English language court system.

Staff Development

The consensus among remote services program directors is that it takes a year of training and experience for a staff member to become fully competent in the job. Programs typically recruit persons with experience – either as lawyers or as court staff members. They provide them basic training in the operation of their service delivery system and its technology. They require them to review and master the court rules, court process diagrams, website materials, document repositories, "canned" responses libraries, and other program materials. They have them "shadow" experienced staff – observing them answering calls, emails, and chats for several weeks – encouraging them to ask questions about the thought process the service provider followed in obtaining information from the inquirer and in choosing how to respond. The next step is closely supervised handling of calls – with each call observed by the supervisor or an experienced staff person and detailed feedback on the new staff member's performance. Programs generally do not allow a new staff person to handle calls without supervision for the first month. The process from that point until full competence involves the new staff person's regularly seeking help on issues they have not yet mastered, supplemented by periodic supervisor observation and critiquing of performance.

The length of time required for full mastery depends to a significant degree on the subject matter scope of the service rendered. Alaska confines its service to family law and guardianship. Maryland provides legal advice – which requires additional training – but initially limited its services to the subject matters handled in the limited jurisdiction court. Utah covers all legal subject matters in all courts of the state.

The exception to this extended training program is in the SHARP program in northern California. That program uses its W drive materials to provide step by step guidance on the handling of typical calls – decision trees specifying the information to obtain and provide at each step in the process. With the use of these tools, the supervisor is comfortable allowing a new staff person to begin working independently after two weeks of training and familiarization.

Training for remote services staff

		CA	CA	Idaho				
	Alaska	SHARP	Orange	CAO	Maryland	Minnesota	Montana	Utah
Distinction								
between legal								
information and								
legal advice								
Website								
navigation								
Forms								
Court								
procedures								
Court rules								
Use of plain								
language								
When teaching								
about								
appropriate use								
of legal jargon is								
important								
Customer								
service								
approach to								
control a call								
Dealing with								
difficult people								
Avoiding ex								
parte								
communications								
with judges								
Working with								
court staff								
remotely								

Collaborative Relationships - Referrals and Outreach

This table documents the entities with which each of the study sites maintains an ongoing relationship.

Referrals

"Hot" referrals – connecting customer	
connecting	
customer	
with specific with specific	
individual	
Lawyer	
referral control of the second	
service	
Modest	
means panel	
Unbundled	
services	
lawyers	
Legal aid Legal aid	
Domestic Company of the Company of t	
violence violence	
services	
Military	
resources	
Tribal/native Tribal/native	
resources	
Local	
community	
organizations Senior	
Centers	
Individual	
volunteers	
Non-English South Control of the Con	
speaker	
organizations	
American	
Sign	
Language	
resources	
Libraries	

Key	Yes	No

Outreach activities have multiple goals. The most lofty goal is to create an environment in which all justice entities, including legal aid and the private bar, work cooperatively to create a network of coordinated service delivery that achieves the goal of 100% access for persons with civil legal problems. A component of that goal is to enlist the help of outside entities in providing additional assistance to self-represented persons whose needs cannot be met completely by the remote services program. Additional components of that goal are to ensure that the services of all programs are coordinated, and that referrals between programs are appropriate, so that resources available for access to civil justice are maximized. A final goal of outreach is to create and nurture positive interpersonal relationships with the leadership of outside entities to ensure that self help services continue to be viewed favorably within the community.

A significant outreach relationship is with the local bar. The eight sites differ significantly in their relationships with the bar. Several (Alaska, Idaho, and Utah) include lawyers as part of their customer base, taking calls from them and helping them navigate the court system. Maryland and Minnesota are at the opposite end of the spectrum – refusing to take calls from lawyers or, in the case of Maryland, from persons represented by lawyers.

Several of the states involved in this study have developed significant limited scope representation programs with their local bars — a major resource for self-represented litigants. Alaska, Idaho and Montana are examples of programs that can refer SRLs to lawyer referral sources of lawyers willing to provide limited scope services. Maryland just recently enacted ethical rules allowing limited scope representation. The Utah State Bar is updating its online lawyer referral directory with a goal of better highlighting those lawyers who offer limited scope representation. In addition, the establishment of a limited scope representation section of the bar is anticipated soon.

All eight of the study sites engage in significant outreach efforts to other justice entities such as legal services programs, governmental entities, such as child support enforcement, social security, housing agencies and other public benefits administrators, domestic violence and homeless advocates, and other organizations the can serve as intermediaries with SRLs needing additional assistance to be able to use the courts and SRL remote services, such as the tribal entities of Alaska and the multicultural resource center in Moab, Utah. Most of the programs have sophisticated processes for publicizing the availability of its services, including relationships with news media and the use of social media. Montana Legal Services Association has the most creative approaches with its bar coasters and its Legal Tip of the Week.

Outreach

	Alaska	CA SHARP	CA	Idaho CAO	Maryland	Minnesota	Montana	Utah
Formal outreach		эпакр	Orange	CAU				
strategy								
Press packet								
Flyer describing								
SRL services								
Partnership with								
court public								
information								
officer								
Use of radio								
Participation on								
community								
boards and								
committees								
Bar								
Legal Aid								
Libraries								
Clergy								
Service clubs								
Chambers of								
Commerce								
AARP								
Aging network								
Disability network								
Health care								
providers								
School								
counselors/nurses								
Multi-cultural								
community								
leaders Tax and								
accounting								
services								
Parent resources								
Mental health								
resources								
Drug and alcohol								
treatment								
Suicide hotline								
Public assistance								
Child support								
enforcement								
agency								

Outreach continued

	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Unemployment								
agency								
Department of								
Motor Vehicles								

Key	Yes	Conducted at court level, not self help staff level	No

Collaborative Relationships - Inreach

Self help programs also have an important mission of communicating the needs of self-represented litigants within the court system to ensure that they encounter a welcoming and accommodating environment within the courthouse and the courtroom. The directors of statewide self help programs can identify processes that are particularly onerous for SRLs and work with judges, lawyers, and other court staff to develop more effective alternatives.

The Alaska Family Law Self Help Center has an elaborate network of internal judicial branch relationships. The Self Help Center Director spends 30% of time training judges, court staff and outside entities on how to deal with self-represented litigants, serves as a member of the senior staff of the Administrative Office of the Courts, staffs the Access to Justice Commission, and has been a driving force for simplification of court processes for self-represented litigants and the institution of proactive caseflow management to ensure that SRLs not only get access into the court system, but get continuing assistance in moving their cases to completion within the system.

Most of the eight remote services sites maintain very close relationships with the staff of the local courts they serve – to make sure that the remote services program is addressing the needs of the local courts, that local court staff are making appropriate referrals to the remote services program, and to improve the overall environment for self-represented litigants throughout the jurisdiction. This is less true in Maryland, where the remote services program is contracted to legal services; in Maryland feedback to the court system is mediated through the court administrator responsible for the legal services contract.

The descriptions of individual programs and services characteristics spreadsheets for each of the programs detail the internal relationships that the eight sites have created within their own jurisdictions.

Inreach

illeach								
	Alaska	CA SHARP	CA Orange	Idaho CAO	Maryland	Minnesota	Montana	Utah
Provide SRL								
training to								
judges								
Provide SRL								
training to								
court staff								
Provide SRL								
training to 3 rd								
party providers								
Director is								
member of								
senior court								
staff								
Participation								
on rules								
committees								
Participation								
on forms								
committees								
Participation								
on Access to								
Justice								
Commission								
In								
communication								
stream with								
court								
executives,								
clerks and								
court IT								
Help design								
court process								
simplification,								
proactive case								
management,								
wording of								
court notices								
coart notices								

Key	Yes	No

Planning for Remote Services Delivery

The Public Welfare Foundation has funded a major effort, called the Justice For All Project, housed at the National Center for State Courts and co-directed by the National Center's Vice President for Research and Technology and the Self-Represented Litigation Network Coordinator, to support strategic planning to implement the 2015 "100% Access to Justice" resolution of the Conference of Chief Justices and Conference of State Court Administrators. The Justice for All Project is developing strategic planning tools that are directly applicable to the subject of providing remote services for self-represented litigants. Those tools can be found on the www.srln.org website.

²⁷ See footnote 1.