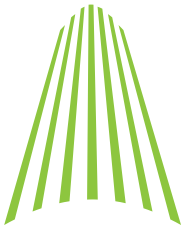
# REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES



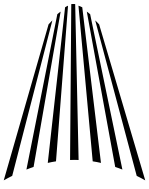
COMMISSION ON
THE FUTURE OF LEGAL SERVICES
AMERICAN BAR ASSOCIATION

2016

REPORT ON THE FUTURE OF

# LEGAL SERVICES

IN THE UNITED STATES



COMMISSION ON
THE FUTURE OF LEGAL SERVICES
AMERICAN BAR ASSOCIATION

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 . . . . . 1

Acknowledgements . . . . . 2

Executive Summary . . . . . 4

Introduction . . . . . 8

**PART I.** The Delivery of Legal Services in the United States: The Commission's Findings. . . . . 10

A. Despite sustained efforts to expand the public's access to legal services, significant unmet needs persist. . . . . 11

1. Most people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need. . . . . 11

a. Funding of the Legal Services Corporation and other legal aid providers remains insufficient and will continue to be inadequate in the future. . . . . 13

b. Pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs. . . . . 13

c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need . . . . . 14

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. . . . . 14

3. The vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation. . . . . 15

4. Many lawyers, especially recent law graduates, are un- or underemployed despite the significant unmet need for legal services. . . . . 16

5. The traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services. . . . . 16

6. The legal profession's resistance to change hinders additional innovations. . . . . 17

7. Limited data has impeded efforts to identify and assess the most effective innovations in legal services delivery. . . . . 18

B. Advancements in technology and other innovations continue to change how legal services can be accessed and delivered. . . . . 18

1. Courts, bar associations, law schools, and lawyers are experimenting with innovative methods to assist the public in meeting their needs for legal services. . . . . 19

a. Courts . . . . . 19

- 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
2. 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
4. 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

**PART II.** The Delivery of Legal Services in the United States: The Commission's Recommendations . . . . . .37

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 . . . . . 37

RECOMMENDATION 2. Courts should consider regulatory innovations in the area of legal services delivery... . . . . 39

2.1. Courts should consider adopting the ABA Model Regulatory Objectives for the Provision of Legal Services. . . . . 39

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. . . . . 40

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.. . . . . 41

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.. . . . . 42

RECOMMENDATION 3. All members of the legal profession should keep abreast of relevant technologies.. . . . . 43

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. . . . . 43

RECOMMENDATION 5. Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process.. . . . . 45

5.1. Physical and virtual access to courts should be expanded. . . . . 45

5.2. Courts should consider streamlining litigation processes through uniform, plain-language forms and, where appropriate, expedited litigation procedures. . . . . 46

5.3 Multilingual written materials should be adopted by courts, and the availability of qualified translators and interpreters should be expanded.. . . . . 46

5.4. Court-annexed online dispute resolution systems should be piloted and, as appropriate, expanded. . . . . 47

RECOMMENDATION 6. The ABA should establish a Center for Innovation. . . . . 48

RECOMMENDATION 7. The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.. . . . . 49

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.. . . . . 49

RECOMMENDATION 8. The legal profession should adopt methods, policies, standards, and practices to best advance diversity and inclusion. . . . . 50

RECOMMENDATION 9. The criminal justice system should be reformed. . . . . 51

9.1. The Commission endorses reforms proposed by the ABA Justice Kennedy Commission and others. . . . . 51

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. . . . . 52

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. . . . . 52

9.4. Minor offenses should be decriminalized to help alleviate racial discrepancies and over-incarceration. . . . . 53

9.5. Public defender offices must be funded at levels that ensure appropriate caseloads. . . . . 54

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. . . . . 55

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. . . . . 56

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. . . . . 57

Conclusion . . . . . .58

**APPENDIX 1.** Resolution 105 and Report on ABA Model Regulatory Objectives for the Provision of Legal Services, adopted February 2016 . . . . . .59

**APPENDIX 2.** Commission Work Plan and Methodology . . . . . .64

1. Working Groups . . . . . 64

2. Hearings . . . . . 65

3. Issues Papers and Solicitation of Comments . . . . . 66

a. Issues Paper on the Future of Legal Services, November 2014 . . . . . 66

b. Issues Paper on New Categories of Legal Services Providers, October 2015 . . . . . 66

c. Issues Paper on Legal Checkups, March 2016. . . . . 66

d. Issues Paper on Unregulated LSP Entities, March 2016. . . . . 66

e. Issues Paper on Alternative Business Structures, April 2016. . . . . 66

4. Grassroots Meetings and Futures Presentations . . . . . 66

5. Commission Webinars . . . . . 69

6. Communications . . . . . 69

7. Commission White Papers . . . . . 70

8. Additional Resources . . . . . 70

**APPENDIX 3.** National Summit on Innovation in Legal Services . . . . . .71

**APPENDIX 4.** State and Local Bar Association Work on Access to Justice and the Future of Legal Services . . . . . .74

**APPENDIX 5.** Joint Statement by William C. Hubbard and Sherrilyn Ifill . . . . . .77

Citations . . . . . .80

# 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

The 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

The ABA Commission on the Future of Legal Services would not have existed without the foresight 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

**Ellyn 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)

In August 2014, the Commission on the Future of Legal Services set out to improve the delivery 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 website[1] 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.
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 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.

1. 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
2. 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.
2. 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* 1976**[2]

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

During 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 Commission'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 Americans[5]—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,[6] have helped to address some of these issues, but significant gaps remain.[7]

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.[8] 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.[9]

### 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.'"[15] 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."[18] 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 matters[19]) 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.[26] 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.[27] Estimates 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."[30] 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]

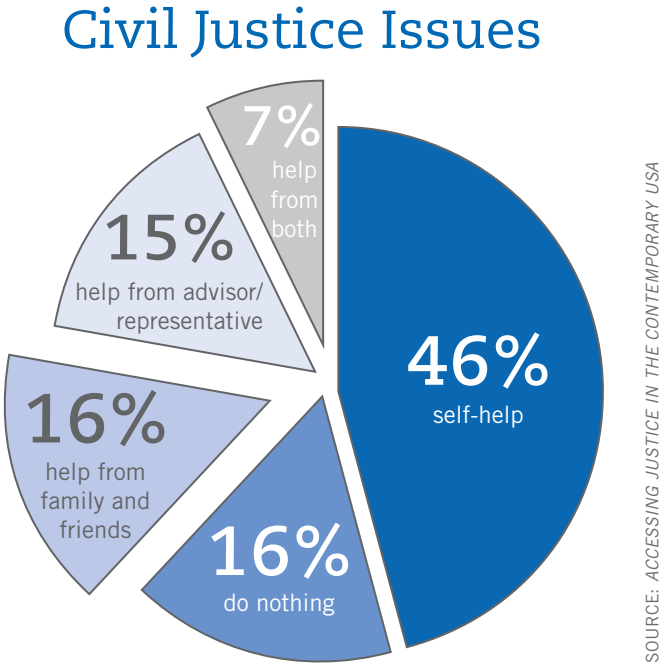
### c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need.

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 Contemporary 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 middle-income 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 under-employed 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 Columbia[61] 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.[66] 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."[68] 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 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]

> *"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

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, web-based 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."[94] 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.[95] Bankruptcy petition preparers are only permitted to populate forms; additional services may constitute the unauthorized practice of law.[96] 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."[97]

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-it-yourself" documents, hold themselves out as representing the litigant, conduct

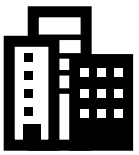
negotiations with opposing counsel, or address the court on behalf of the litigant, unless to provide factual information at the court's discretion."[106] The program is volunteer-based and operates under the supervision of a court navigator program coordinator. The New York Courthouse Navigator Program 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



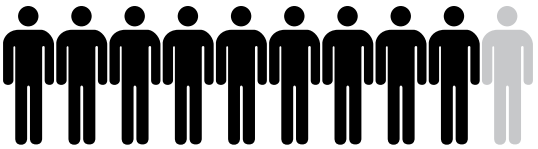
**2,000**
unrepresented tenants and landlords helped

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]

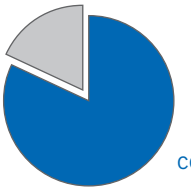
**Courthouse Facilitators (California, Washington State)**. Courthouse facilitators provide unrepresented individuals with information about court procedures and legal forms in family law cases.[123] In California, the Judicial Council administers the program by "providing funds to these court-based 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 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]

## Courthouse Facilitators



**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

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.[131] 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 scholars[166] and regulators[167] 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.[176] 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

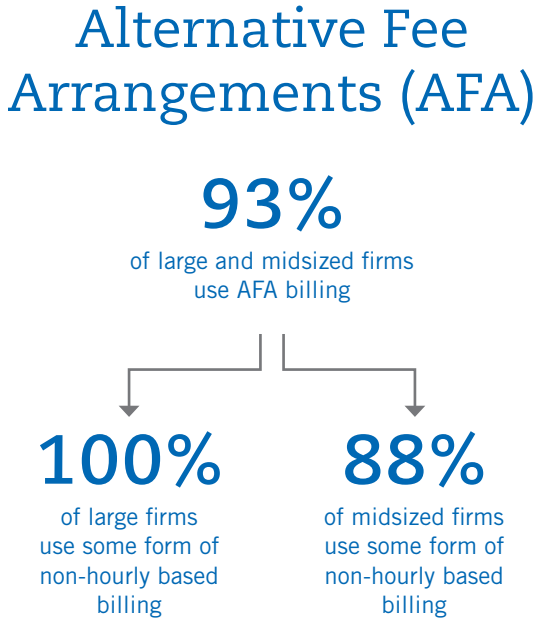
> *"Our law schools must provide students with tools to innovate boldly and therefore to reimagine the structures and possibilities of legal services in the new millennium."*
>
> Daniel B. Rodriguez
> HAROLD WASHINGTON PROFESSOR AND DEAN
> NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW
> CHICAGO, IL

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 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 matter-related 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."[188] 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:

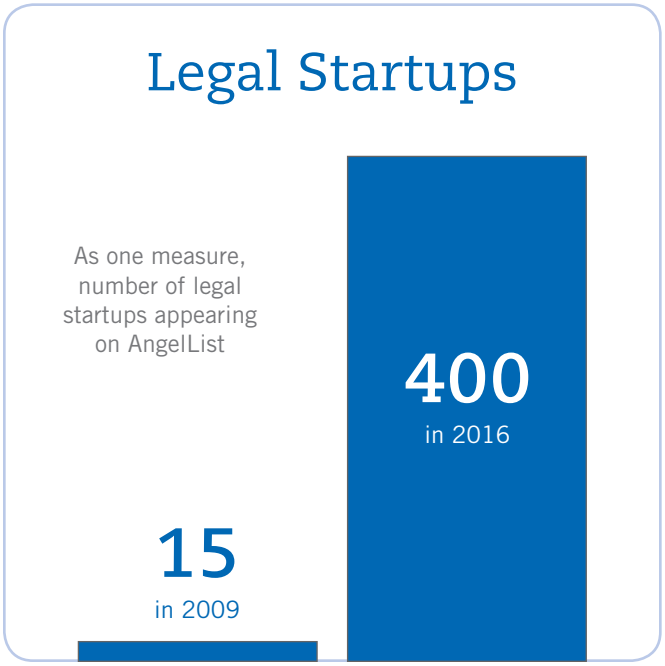
  1. Business to consumer, including small businesses—for example, finding lawyers, lawyer ratings, and lawyer matching; do-it-yourself legal tools; law for small transactions, such as a simple contract; form documents; document automation/assembly; dispute avoidance/management; collaborative law; and 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 marketplaces, and trial/transactional tools.[201]

- MEDICAL-LEGAL PARTNERSHIPS Medical-legal 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, write-offs 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.

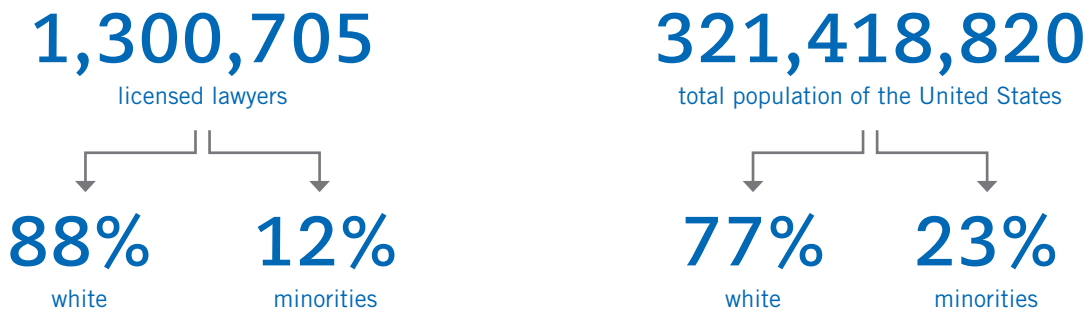
Consumers of legal services—both the public and lawyers themselves—are encountering new types of providers. These providers offer a range of services, including "automated legal document assembly for consumers, law firms, and corporate counsel; expert systems that address legal issues through a series 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 firms[245] 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.

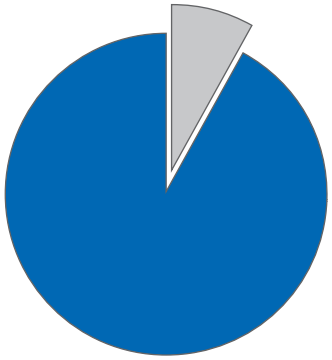
## C. Public trust and confidence in obtaining justice and in accessing legal services is compromised by bias, discrimination, complexity, and lack of resources.

### 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."[249] 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



**92%**
law firm equity partners are white

**8%**
law firm equity partners are minorities

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."[268] 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
2. 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."[274] 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.

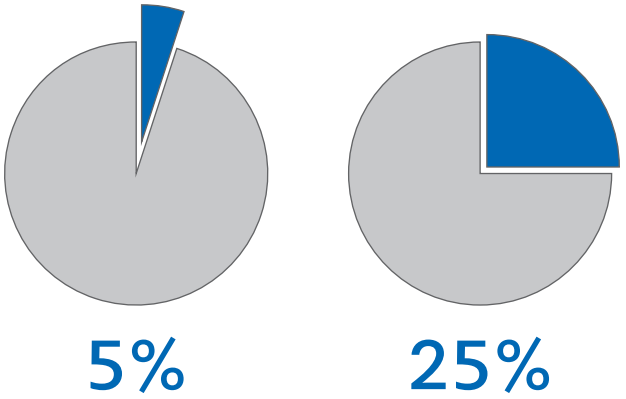
In 1963, the U.S. Supreme Court established in *Gideon v. Wainwright* that all states, counties, and local jurisdictions must provide representation for criminal defendants unable to afford a private attorney.[282] Nevertheless, as recognized by the U.S. Department of Justice, even with "the significant 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 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 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

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

As 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 Underserved[307]

- 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 Justice*[308] 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."[310] The 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 empirical 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 effort, 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 check-ups. 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.
2. Candor and Transparency: The promotion, distribution, and content of legal checkups must not be false, misleading, or deceptive.
3. Substantive Quality: Legal checkups should be created by or in consultation with individuals who are competent in the applicable law that the checkup addresses.
4. Communication: Legal checkup providers should clearly communicate to users that the quality and effectiveness of the check-up depends on the users providing full and accurate information.
5. 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.).
   c. 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.

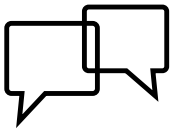
## 5.3. Multilingual written materials should be adopted by courts, and the availability of qualified translators and interpreters should be expanded.

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 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.

> *"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

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 transform 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."[360] This community partnership "brings together law enforcement, social service agencies, and religious institutions to start working with inmates while they are still incarcerated."[361] 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."[367] 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 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 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

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 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.

> *"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

# 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 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]

> *"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

# CONCLUSION

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

**Eleanor Roosevelt**[376]

The 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

[1] 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 application 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

its comments to the Commission, paralegals already assist in the accomplishment of many of the Commission's proposed Regulatory Objectives.

4 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

6 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."

7 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."[10] 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

[10] *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.

[11] 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%20ethics%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-of-legal-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 OTHER 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-future-of-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

The 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)
2. Resources (lack of data on legal needs/quality metrics/etc.; insufficient funding)
3. Consumer knowledge/outreach (identifying lawyers as solution to problems; quality control)
4. 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

1. Community based legal resource centers (libraries, retail, etc. during night/weekend hours)
2. Standardized legal forms across all jurisdictions
3. Increased government funding for court technology
4. 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
6. Develop open platform for app development to serve legal needs
7. Legal insurance
8. Faith-based initiatives
9. Online dispute resolution
10. Uniform, nation-wide hotline that supports crisis management/triage and provides referrals
11. Incubator programs for new attorneys
12. "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
2. 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
6. Future of Legal Services taught in all law schools
7. Public private partnerships (e.g. revamp PACER)
8. 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)
3. Online dispute resolution model outside of court system as first step
4. Judge White's apprenticeship program
5. 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
3. 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

1. 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.
5. 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
10. Consider 2-year legal education with third-year 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

The 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%20Report%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/default-document-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/Access-to-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/hawaii-access-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/court-administration/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

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 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.

2. 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.

3. 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.

8. 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

[1] *See Commission on the Future of Legal Services*, American Bar Association, *available at* http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-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).

[3] *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-legal-services/whitepapers.html, *archived at* (https://perma.cc/9RTT-BHAN).

[4] *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).

[8] *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).

[13] 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).

[14] 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).

[15] 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).

[16] *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.

[19] *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).

[20] *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).

[21] *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).

[22] *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%20TaskForce%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.

[23] *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/wp-content/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).

[25] *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.*

[28] 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-civil-justice-system-preventive-legal-care, *archived at* (https://perma.cc/6JPS-RHXF).

[30] *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).

[31] 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).

[33] *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).

[34] 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).

[36] 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.*

[50] *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).

[53] 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.

[58] *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").

[60] *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).

[63] *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 a*t (https://perma.cc/M49L-EXLL).

[71] *Id.*

[72] Elizabeth 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.

[74] 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").

[77] *See* 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 "[l]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/wp-content/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).

[85] *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/report-summit-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/online-dispute-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-c754-11e4-aa1a-86135599fb0f_story.html, *archived at* (https://perma.cc/9K82-6NDN). *See also* discussion *infra* notes 159-64 and accompanying text.

[94] Wash. Exec. Order No. 25700-A-1005 (June 15, 2012), http://www.courts.wa.gov/content/publicUpload/Press%20Releases/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).

[97] 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-information-concerning-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%20Facilitator%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/Licensing-and-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%20Futures%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).

[156] *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%20Court%20Task%20Force%20to%20Examine%20Limited%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%20to%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* http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm, archived at (https://perma.cc/JEP5-BFL9).

[161] *See* Hon. Kenneth Shluger, *Reforming Legal Education*, Connecticut Lawyer (2015) (recommending that non-lawyers 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/atj-commissions/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-practice-technology/, *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-unbundled-services-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/press-releases/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%20Outsourcing.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-accurate-listing-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 well-being." *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 AI-Powered App for Legal Help*, Wired (Aug. 7, 2015), *available at* http://www.wired.com/2015/08/voice-powered-app-lawyers-can-ask-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-is-lss/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-insurance-plan-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/lawyer-demographics-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-testifies-for-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%20Information/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).

[300] *Joint Statement on Eliminating Bias in the Criminal Justice System*, ABA (July 2015), *available at* http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf_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.*

[303] 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/aba-news-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 low-income 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%20Report.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%20Examine%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%20Report%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/Vol76_2/76.2.0865%20NYSBA%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/court-services/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.

[348] Renee 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/research-and-analysis/fact-sheets/2016/01/31-states-reform-criminal-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).

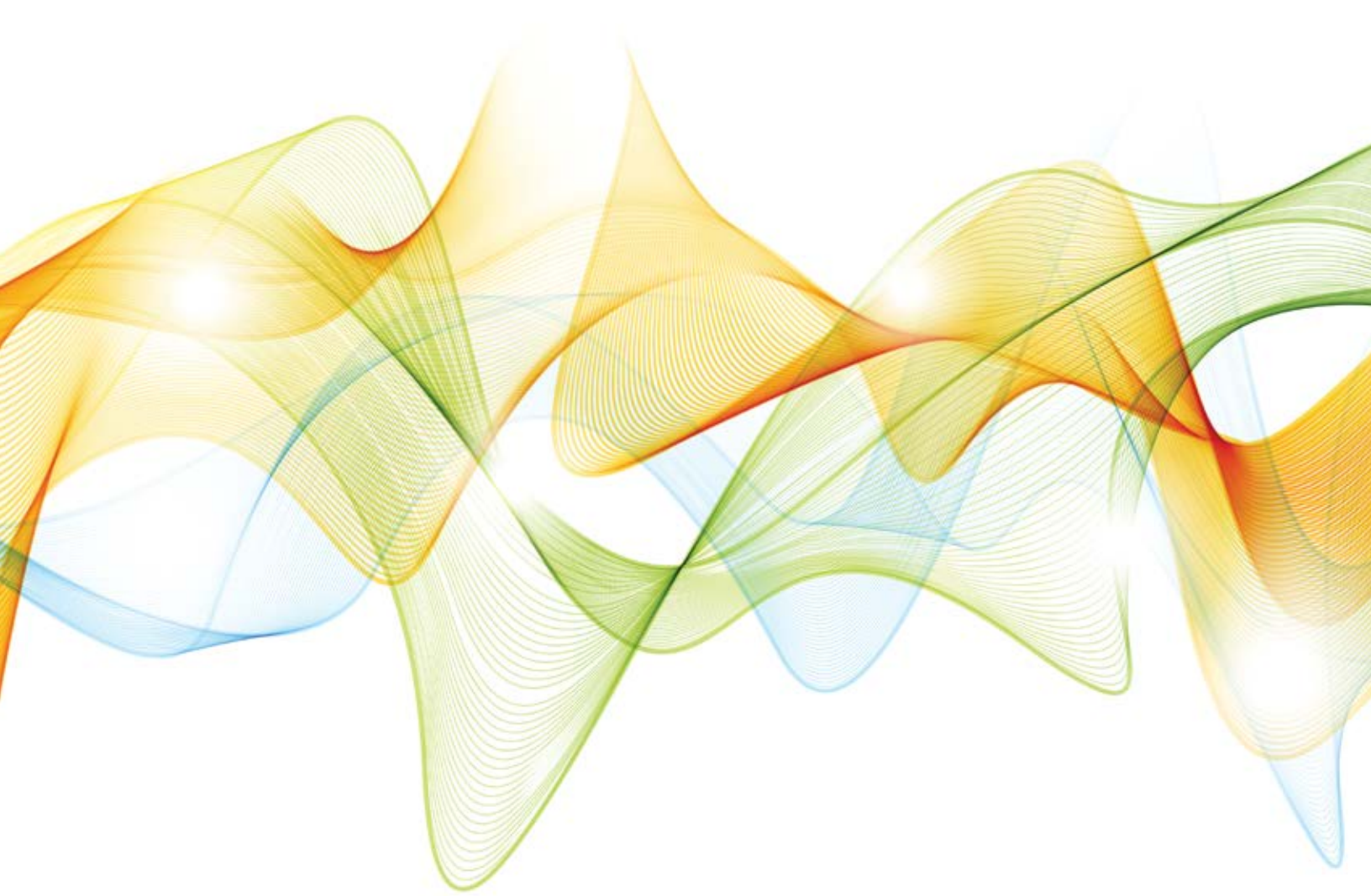
[376] Eleanor Roosevelt, Tomorrow is Now (1963).

[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



Defending Liberty
Pursuing Justice