

# Civil Justice Strategies Task Force Report & Recommendations



State Bar of California

2015



# Civil Justice Strategies Task Force Report and Recommendations

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This report is available at

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# Civil Justice Strategies Task Force Report and Recommendations

## Civil Justice Strategies Task Force\*

**Luis J. Rodriguez,**  
**Chair, Civil Justice Strategies Task Force**  
President, State Bar of California  
L.A. County Public Defender's Office

### State Bar Board of Trustees

**Craig Holden: Vice-Chair**  
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**Michael Ermer – Large Firm**  
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**Sonia Gonzales**  
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### Modest Means

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Co-Founder/Executive Director  
Community Initiatives for Visiting Immigrants in  
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Supervising Attorney-Self Help  
Neighborhood Legal Services of Los Angeles  
County

### Bar Associations

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Los Angeles County Bar

**Harvey I. Saferstein**  
Mintz Levin Cohn Ferris Glovsky & Popeo  
Disability Rights Legal Center

**Bryant Yang**  
Irell & Manella  
Asian Pacific American Bar Association of Los  
Angeles County

### Lawyer Referral and Information Service (LRIS)

**Carole Conn**  
Director, Lawyer Referral and Information  
Service, Bar Association of San Francisco

### Public Members

**Michael Judge**  
Former Chief Public Defender for the County of  
Los Angeles

**Hon. Douglas Miller**  
Associate Justice Fourth District Court of  
Appeal, Division 2

**Marty Omoto**  
California Disability Community Action Network

**Academic**

**Hon. Earl Johnson, Jr.**

Visiting Scholar, University of Southern California Law School

**Eleanor Lumsden**

Professor, Golden Gate University School of Law

**James W. Meeker J.D. PhD**

Professor, Department of Criminology, Law and Society and Associate Dean of Students for the School of Social Ecology, University of CA, Irvine

**Supreme Court Liaison**

**Hon. Laurie Zelon**

Associate Justice, Second District, Division Seven of the California Courts of Appeal

**CA Commission on Access to Justice Liaison**

**Joanne E. Caruso**

Vice President, Global Litigation for Jacobs Engineering Group

**Staff**

Kelli Evans, Senior Director, Access to Justice, State Bar of California

Francisco Gomez, CJSTF Coordinator, State Bar of California

Susan Phan, Assistant General Counsel, Office of General, State Bar of California

\* **Titles and affiliations accurate as of the final hearing on November 13, 2014**



## Chair, Civil Justice Strategies Task Force

Date: February 13, 2015  
To: Members CJSTF, Witnesses, Staff and Public Attendees:  
From: Luis J. Rodriguez, Chair, CJSTF

As Chair of the CJSTF, I want to express my appreciation for the hard work of everyone involved and thank all of you for your effort.

The challenge for any group, given this very large task and very short amount of time, is that we've had a lot of big, dreaming conversations and engaged quite a few radical ideas; hoping to be bold.

We've heard from some: "don't blow things up ... there are things that are working." We've heard from others that the only way to solve the access problem is to do things completely differently than in the past. These opposing perspectives have been part of the discussion as well as part of the challenge.

As we enter into a great transformation of the legal profession and see positive momentum in the equal access movement, we are also highly cognizant that our efforts are but one step towards the realization of societal justice.

It is the desire of the Civil Justice Strategic Task Force members that the California State Bar Board of Trustees embrace these recommendations. We believe that this report will serve as a road map that will empower the many to do the necessary work for the needy in our legal system

Regards,

Luis Rodriguez  
Chair, CJSTF





## **Civil Justice Strategies Task Force Background**

In November 2013, the State Bar Board of Trustees approved the creation and appointment of the Civil Justice Strategies Task Force as a special committee of the board.

The charge of the task force was to analyze the reasons for the existing “justice gap,” to evaluate the role of the legal profession in addressing the crisis, to seek the input of groups who have been working to expand access to justice to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true access to justice in California.

Development of the action plan included a series of public meetings with presentations by experts to obtain input from key stakeholders, including those who have long struggled to address the justice gap, as well as others who may be able to suggest creative solutions. The task force was chaired by Luis Rodriguez (2013-14 State Bar President) and was comprised of members of the State Bar Board of Trustees, Solo, Small Firm and Large Firm representatives, Public Sector representatives, Modest Means representatives, Bar Associations, Lawyer Referral and Information Services, Public Members, Academics and liaisons from the California Supreme Court and the California Commission on Access to Justice.

Seven all-day public hearings were held by the task force to consider input and make recommendations to the Board of Trustees.

- Hearing I: Examining the Causes - March 26th (10:00 AM - 4:00 PM) (Los Angeles)
- Hearing II: Access to Justice Obstacles and Success - April 30 (10:30 AM - 3:30 PM) (San Francisco)
- Hearing III: Access to Justice Obstacles and Success - May 28 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing IV: New Solutions - June 18 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing V: Cost of Legal Education - August 26 (10:30 AM - 3:30 PM) (San Francisco)
- Hearings VI: Prepare Action plan - October 20 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing VII: Prepare Action plan - November 13 (10:30 AM - 3:30 PM) (Los Angeles)

Chair Luis Rodriguez created three subcommittees of the task force to help guide the work of the full task force and with the hope that the task force could arrive at a consensus about how to improve the access to justice problem and lay the groundwork for dramatic progress in the next few years.

The three subcommittees were: (1) the “Now Group” which was tasked with a review of the current access environment in order to identify what approaches are working now and what may be scalable or can be replicated; (2) the “New Group” which focused on innovations that currently are being considered or implemented in other jurisdictions; and (3) a “Law School Debt Group” that examined the intersection of law school debt and access to justice.

This report includes the following sections: an acknowledgement by Luis Rodriguez; a brief introduction of the problem the task force set out to address; lists of the topics and witnesses included in each hearing; a summary of key recommendations; excerpts from the testimony; and the individual reports from each of the Civil Justice Strategies Task Force’s subcommittees.

## Introduction

*The United States has "the heaviest concentration of lawyers on earth...but no resource of talent and training...is more wastefully or unfairly distributed than legal skills. Ninety percent of our lawyers serve ten percent of our people. We are overlawyered and underrepresented."*<sup>1</sup>

In recent years, access to legal representation and the courts has become increasingly limited. Despite the existence of a diverse, statewide network of non-profit legal services organizations, millions of low and moderate income Californians are unable to access affordable legal assistance when they need it. For many, the cost of legal representation makes seeking legal assistance impossible. For others still, unfamiliarity with our legal system, and language, geographic, or cultural barriers limit access to justice.

Unfortunately, there has never been adequate funding to provide legal assistance for the millions of Californians who need help. Even before the economic downturn, legal services organizations only had sufficient resources to meet about 20-30 percent of the legal needs of low-income Californians. In recent years, the funding has reached critically low levels. One of the largest sources of state funding, interest on lawyers' trust accounts ("IOLTA"), has dropped from over \$22 million in 2007-2008 to under \$5 million in 2013-2014. Not only did IOLTA revenue drop over 80% between 2008 and 2014, but other sources of funding including government grants and contracts, foundation funding and private giving, have all been negatively affected by the economic downturn.

Similarly, the primary federal source of funding for legal services, the Legal Services Corporation (LSC), also has faced historic declines. In 2014, LSC provided \$365 million nationally for civil legal assistance to low-income people – down from \$420 million four years ago. This marks a 30 percent decrease from 2007 to today.<sup>2</sup> Meanwhile, the number of persons financially eligible for LSC-funded legal aid– those with incomes at or below 125% of the federal poverty guideline (currently \$14,588 for an individual and \$29,813 for a family of four) has grown over this same period. Since LSC funding directly supports 11 of the largest legal service providers in California, and many others through sub-grants, these declines have had a severe negative impact on the ability to provide legal services to low-income Californians. Reduced funding has forced many legal services organizations to reduce staff and cut needed programs. According to LSC, nearly 50% of its grantees reduced staff and client intake services in 2013.

In California, thousands of individuals who seek help are turned away simply because legal aid providers do not have sufficient resources to assist all who qualify for their

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<sup>1</sup> Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, p. 32 (May 2104) quoting former President Jimmy Carter (remarks at the 100th Anniversary Luncheon of the Los Angeles County bar Association, May 4, 1978, printed in 64 ABA J. 840, 842 (1978))

<sup>2</sup> James J. Sandman, President of the Legal Services Corporation, in his memorandum to Finance Committee (June 25, 2014), *Management's Recommendation for LSC's FY 2016 Budget Request*

services. Millions more moderate-income Californians are ineligible for free legal aid yet they cannot afford to pay for lawyers. This “Justice Gap” means that increasing numbers of individuals often have no choice but to represent themselves. While there are no comprehensive statistics on how many people represent themselves in court, according to an American Bar Association survey, 60% of state judges have reported increases in the number of civil litigants who are appearing without counsel.

Sixty-two percent of the surveyed judges stated that parties were hurt by not having a lawyer.<sup>3</sup> While some legal problems are relatively simple and can be resolved appropriately without counsel, others are more complex and require legal advice and guidance. Still other legal matters demand full representation due to their complexity, the interests at stake, or other factors. A lack of adequate legal assistance can have dire consequences, including a loss of income, housing, or educational opportunities; family instability; damage to physical or mental health; or verbal or physical violence or threats of violence.<sup>4</sup> In addition to risking severe and potentially irreparable harm to individuals and families, the increase in self-represented litigants affects the courts’ ability to handle and dispose of cases which, in turn, often adversely affects the timeliness of the handling of cases in which litigants are represented by counsel.

Over the past two decades, some significant efforts to expand access to justice in California have occurred, including identification of new funding sources for legal aid, expansion of self-help resources, and increased mobilization of pro bono attorneys. As Professor Deborah Rhode observes, despite these efforts, “...the situation has not improved. And at least part of the problem is of the profession's own making. Our nation does not lack for lawyers. Nor does it lack for ideas of how to make legal services more accessible. The challenge remaining is to learn more about what strategies work best, and to make them a public and a professional priority.”<sup>5</sup>

This challenge was at the heart of the formation and work of the Civil Justice Strategies Task Force. Over the course of nine months last year, the Task Force conducted hearings and heard from witnesses on a wide range of topics related to improving access to civil justice in California. While witnesses and Task Force members discussed many obstacles and challenges, they also discussed strategies and approaches for helping to narrow the Justice Gap in California. Based on the hearings, discussions, and related materials, the Task Force developed the recommendations discussed in this report. The Task Force recognizes that there is no single solution that will close the Justice Gap in California. As discussed in this report, however, the Task Force believes that there are a number of concrete steps that the State Bar, courts, lawyers, and other stakeholders can take to help ensure that every Californian can access legal help when they need it.

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<sup>3</sup> Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts

(Preliminary) ABA Coalition for Justice, Linda Klein, Chair (July 12, 2010)

<sup>4</sup> See, e.g., Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study (CNSS), by Rebecca Sandefur and the American Bar Foundation (August 2014).

<sup>5</sup> Rhode, Deborah, A Roadmap to Justice

**Civil Justice Strategies  
Task Force  
Report & Recommendations**

**APPENDIX A:  
Panelists & Witnesses  
at the Hearings on  
Civil Justice Strategies**

**March 2015**





## CIVIL JUSTICE STRATEGIES TASK FORCE HEARING

Wednesday, March 26, 2014

10:00 AM - 4:00 PM

The State Bar of California

845 South Figueroa Street

Board Room, 2nd Floor

Los Angeles, CA 90017-2515

Panelist and Witnesses

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### Civil Justice Strategies Task Force Introductions and Overview

Luis Rodriguez

*2013-14 President of the State Bar of California and Chair of the State Bar's Civil Justice Strategies Task Force*

### A Brief History of the Legal Services Landscape

Justice Earl Johnson, Jr.

*Visiting Scholar, University of Southern California Law School*

Justice Laurie Zelon

*Associate Justice, Second District, Division Seven of the California Courts of Appeal*

### Overview of State Bar Legal Services Funding

Kelli Evans

*Senior Director, Administration of Justice, State Bar of California*

### The Obstacles to Greater Access

Gillian Hadfield

*University of Southern California, Gould School of Law, Richard L. and Antoinette Schamoi Kirtland Professor of Law and Professor of Economics*

## CIVIL JUSTICE STRATEGIES TASK FORCE HEARING

Wednesday, April 30, 2014

10:30 am - 3:30 pm

The State Bar of California

180 Howard Street

Board Room, 4th Floor

San Francisco, CA 94105

Panelist and Witnesses

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Access to Justice: A Roadmap to Reform

Deborah Rhode

*Ernest W. McFarland Professor of Law, Stanford Law School*

Legal Incubators

Honorable Goodwin Liu

*Associate Justice, California Supreme Court*

Reengaging the Private Bar through Limited Scope Representation

Sue Talia

*Certified Family Law Specialist and Private Family Law Judge*

Self – Help

Bonnie Hough

*Managing Attorney, California Administrative Office of the Courts (AOC)*

Modest Means Representation

Luz Herrera

*Visiting Clinical Professor at the University of California, Irvine School of Law*

So Cal Pro Bono Managers

Lani Woltmann

*Pro Bono Director Disability Rights Law Center*

Tai Glenn

*Executive Director, f Levitt & Quinn Family Law Center.*

Law School Clinics

Angelo Ancheta

*Executive Director, Katharine & George Alexander Community Law Center,  
Santa Clara Law*



## CIVIL JUSTICE STRATEGIES TASK FORCE

Wednesday, May 28, 2014  
10:30 AM - 3:30 PM  
The State Bar of California  
845 South Figueroa Street  
Board Room, 2nd Floor  
Los Angeles, CA 90017-2515

Panelist and Witnesses

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New York Innovations  
Honorable Jonathan Lippman,  
*Chief Judge of the New York Court of Appeals*

Limited Licensure  
Steve Crossland  
*Former President, Washington State Bar & Chair, Limited Licensing Board*

Private funding, Technology, and Access to Justice  
Veyom Bahl  
*Program Officer, Robin Hood Foundation - funding NY Immigrant Justice Corp*

Margaret Hagan  
*Student Fellow at the Stanford Center for Internet and Society*

Colin Rule  
*CEO of Modria.com, an online dispute resolution service provider, and non-resident Fellow at the Center for Internet and Society at Stanford Law School*

## CIVIL JUSTICE STRATEGIES TASK FORCE

Wednesday, June 18, 2014  
10:30 AM - 3:30 PM  
The State Bar of California  
845 South Figueroa Street  
Board Room, 2nd Floor  
Los Angeles, CA 90017-2515

Panelist and Witnesses

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La Verne Flat-Rate Law School Tuition

Gilbert A. Holmes  
*Dean, La Verne School of Law*

UCSC, UC Hastings Law Accelerated Law Degree Program (3 + 3)

Kelly Weisberg  
*Professor, University of California, Hastings College of Law*

State Bar Task Force on Admissions Regulation Reform

Jon Streeter  
*Former State Bar President; Chair, Task Force on Admissions Regulation Reform*

Access 3D

Justice Laurie Zelon  
*Associate Justice, Second District, Division Seven of the California Courts of Appeal*

## CIVIL JUSTICE STRATEGIES TASK FORCE

Tuesday, August 26, 2014  
10:30 AM - 3:30 PM  
The State Bar of California  
180 Howard Street  
Board Room, 4th Floor  
San Francisco, CA 94105

### Panelist and Witnesses

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The Federal Picture – Data, Trends, Challenges and Possible Federal Reforms

Heather Jarvis  
*Student Loan Expert*

Chris Chapman  
*President and Chief Executive Officer of the Access Group*

What Does the Status Quo Look Like In Our State – California Finances, Law School Costs, Challenges and Possible Reforms?

Dean Linda Bisesi  
*Assistant Dean and Director of Financial Aid at the University of California Hastings College*

Eleanor Lumsden  
*Associate Professor, Golden Gate University School of Law; Member, Civil Justice Strategies Task Force*

The Impact of Debt on Students and New Lawyers

Emily Aldrich  
*2013-2014 State Bar California Young Lawyers Association Vice Chair; 2014-2015 CYLA Chair*

Nathaniel Lucey  
*2011-2014 State Bar California Young Lawyers Association Board Member; 2014-2015 Special Advisor*

Shavonte Keaton  
*President of the Black Law Students Association, Golden Gate University School of Law*

Travis Thompson  
*President of the Business Law Association, Golden Gate University School of Law*



# Civil Justice Strategies Task Force Report and Recommendations

## **APPENDIX B:** Summary of Recommendations

**March 2015**





## CJSTF RECOMMENDATIONS

### “Now Group” Draft Recommendations

1. **Funding:** recommend that the State Bar boost promotion of the Justice Gap Fund in order to increase donations to the fund by lawyers and law firms.
2. **Incubators/Modest Means:** recommend that the State Bar track the trajectory of incubator participants; and recommend that the State Bar help create a framework (e.g., mentors, toolkits, forms, etc.) to assist modest means practitioners.
3. **Unbundling:** recommend that the State Bar do more to promote and incentivize limited scope representation.
4. **Improved Coordination:** recommend greater coordination between the State Bar and Judicial Council, including in efforts to link the various stakeholders involved in providing affordable legal services.
5. **Civil Gideon:** recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Land Lord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what’s working in the pilot projects, publicly support them, and help to scale them.

### “New Group” Draft Recommendations

1. **Limited License Legal Technicians (LLLT):** The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and “licensing” would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete.
2. **Alternative Business Structures (ABS):** The State Bar should monitor the ABS concept in other jurisdictions, with particular attention to the impact on pro bono and public impact litigation in jurisdictions that adopt these practices. Until this information is available to consider and understand, the Bar should not proceed with new rules or programs.
3. **Re-engineering:** recommendation for a pilot project, perhaps in landlord-tenant, using a joint working group of the bar, the courts, and perhaps relevant social scientists and tech people, to explore how the system could be redesigned to streamline the process, make it easier to use, and provide protection for the parties’ rights.
4. **Navigators:** A program should be designed to be piloted in one or more self-help centers, to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table

with the litigant, but not to address the court. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.

### **Law School Debt Draft Recommendations**

1. **Info Clearinghouse:** The Bar should serve as a clearinghouse of information on student debt management and repayment programs and key student loan debt and repayment information.
2. **California Young Lawyers Association:** Working through CYLA, the Bar should develop mechanisms and new approaches to assist young lawyers in better understanding and proactively addressing the implications of their student debt obligations.
3. **Creating an Enhanced Understanding of Student Debt Data, Concerns and Implications:** The Bar should continue to put a spotlight on the issue of law school debt, promote an enhanced understanding of the link between student debt and broader community access to justice and public safety concerns, and assist others working to study, quantify and better define the implications of student loan indebtedness.
4. **Assess Relationship to Misconduct:** The Bar should work through its discipline arm to assess whether student debt is precipitating or contributing to lawyer misconduct.
5. **Work with Law Schools:** The Bar should use both its law school regulatory power as well as its established relationships with law school leaders to encourage enhanced counseling, strategies and disclosures in regard to student debt.
6. **Participate in National Dialogue:** The State Bar should consider ways to add its voice to the national dialogue seeking to develop and promote enhanced loan forgiveness and repayment approaches.
7. **Encourage New Law School Cost Models:** The State Bar should help encourage new and innovative models that seek to address law school cost concerns.

**Implementation:** The Board of Trustees should create a group to implement these recommendations



# Civil Justice Strategies Task Force Report & Recommendations

## **APPENDIX C:** Excerpts from Witnesses at Hearings

**March 2015**





## Excerpts from Witnesses at Hearings

### **Luis Rodriguez, Chair CJSTF & 2013-14 State Bar President**

*If you can indulge me just a couple minutes, it's somewhat of a selfish reason as to why this is important. I've been a Public Defender for about 20 years, and on the criminal side, although it's not a perfect system, there is a constitutional guarantee to counsel. And in the two decades that I've been in that office, I've seen the benefits of our clients having a voice in those tough situations. The selfish part is this, is that many of our clients and their families are your clients in the civil side and their families as well, and the struggle that they face on a regular basis, not only them but 4 everybody else, we're looking at about four-fifths of the general population cannot afford an attorney in a civil action."*

*"The charge of the Task Force is as follows: It's to analyze the reasons for the existing justice gap, to evaluate the role of the legal profession in addressing the crises, to seek the input of groups who have been working to expand access to justice, to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and in other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true access to justice in California. Those are our responsibilities."* **March 26, 2014 CJSTF Hearing**

### **Justice Earl Johnson, Jr., Visiting Scholar, University of Southern California Law School**

*"...the California legislature said.[If we could make them live up to what they said in their findings when they created the Sargent Shriver Counsel Project, take a look at what they had to say] "In many civil cases, lawyers are as essential as judges and courts to the proper functioning of the justice system. The state has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the trial of those cases."* **March 26, 2014 CJSTF Hearing**

### **Justice Laurie Zelon, Associate Justice, Second District, Division Seven of the California Courts of Appeal**

*"And one of the problems that I hope we can think about together is the fact that our whole system of laws and courts was designed where the judge gets to sit and listen to trained advocates who have prepared the matter, who know the rules of evidence, and who know the law, present that case to the judge, and the judge can then hear the merits of the case, can get the testimony in that is relevant to the matter, and make a decision on the merits with some confidence that that judge knows what the legal principles applicable are. We don't have that system anymore. So everything we talk about has to be in light of the fact that our system might not have wanted to change but change has been thrust upon us"*

*"So we are somehow stuck. The poverty population, the needs of the public, the increasing complexity of the social welfare system and everything else in the country that faces them has outstripped our ability to continue to use the same processes that we have been using"*

*in order to solve their problems. Which brings me to Einstein. Doing what we have been doing in the same way we have been doing it meets his definition of insanity to a "T," and I think that is why our President, Mr. Rodriguez, has brought us here. Because we need to look at some more fundamental and systemic changes in order to break through that barrier that we seem to be stuck at."*

*"Enhanced pro bono services, as I said, we have made strides in pro bono. As more and more lawyers are having trouble finding employment, we have this interesting anomaly of unemployed lawyers, clients who need services, and no match between them, and that's something that is not necessarily limited to pro bono but deals with something that I'm going to talk about next, which is enhanced law school programs and incubators.*

*If we could teach lawyers how to manage a practice effectively and give them techniques so that they could represent clients for less, then a lot of the people of modest means who are now priced out of the market might have a possibility of obtaining counsel at dollar amounts they could afford."* **March 26, 2014 CJSTF Hearing**

**Kelli Evans, Senior Director, Administration of Justice, State Bar of California**

*"My bottom line is notwithstanding all of these different pieces and pots and pools of money that we've put together in a patchwork to help support legal aid, it's just not sufficient. It hasn't been sufficient historically even when IOLTA was at much higher rates. It's certainly not sufficient now.*

*We don't anticipate the rates going up anytime soon, certainly not at the level -- you know, there would be something else happening with the economy if we saw the rates be at the level we need them to be to make a real dent.*

*So I think the charge and the challenge of the Task Force is crystal clear. We have to, I think, look beyond the dollars in coming up with creative, innovative ways of helping to narrow the justice gap."* **March 26, 2014 CJSTF Hearing**

**Gillian Hadfield, University of Southern California, Gould School of Law, Richard L. and Antoinette Schamoi Kirtland Professor of Law and Professor of Economics**

*"Now, what I'm going to say to you -- I think you've also heard -- this is not really just a poverty problem. I mean, I would say look at the 95 percent problem. We'd be lucky if we think that 5 percent of the population actually accessed reasonable amounts of legal services, but that's the usual definition there.*

*"We do know casually the amount of unrepresented -- lack of representation in courts -- again, maybe you live with this -- are very high. The New York study did look at this systematically, and their numbers are just off the charts; 98 percent of 15 people facing eviction, 98 percent of people in family matters, 58 percent of people facing foreclosure, of course, standing up against a real represented bank. Just off the charts"*

*“So here's just some calculations. So California has 12.5 million households, and if you take those, the ABA numbers because we don't have specific California legal needs numbers -- if you just took the 1995 ABA which is probably low, half of those households at any point in time are dealing with a legal problem, and if they are, they're probably dealing with two. So that's 12.5 million legal problems. I know I said no math, but I'm doing it for you. So that's a minimum. Suppose you wanted to give one hour of legal help to each of those households. Now, remember, these are only -- the kinds of problems that get asked on these surveys are what you might call erupted problems. These are not the legal advice needs. We don't ask did you sign a mortgage document recently, did you sign a rental agreement recently, have you now got a problem that's turned into a problem. So if you wanted to give one hour of help on 4 those erupted legal problems, that would cost \$3.1 billion at the average rate of a solo, small firm practitioner, which is in the area of 200 to \$250 an hour. So that's if you just wanted to extend that out into the population of lawyers who are regularly serving ordinary households.”*

*“...And if you wanted to do it with pro bono, it would be 70 hours per active lawyer in California. That's for one hour of help.”* **March 26, 2014 CJSTF Hearing**

**Professor Deborah Rhode, Ernest W. McFarland Professor of Law, Stanford Law School**

*“Ontario which has licensed the paralegals to represent individuals in minor court cases in administrative tribunal proceedings report solid levels of public satisfaction with the services received. And, in this country, one study of nonlawyer specialists who provided legal representation in bankruptcy and administrative agency proceedings found that they generally performed as well or better than attorneys. Extensive education is, in short, less critical than daily experience, and we need to recognize that much as such.”* **April 30, 2014 CJSTF Hearing**

**Associate Justice Goodwin Liu, California Supreme Court and Co-chair of the Access to Justice Commission of Modest Means Incubator Project**

*“I would like to read -- this is Business & Profession Code 6068 (h) [it] says, “It shall be the duty of an attorney... never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.” That's actually in the state law. And that's aspirational, of course, but I think it captures so much of why young people go to law school, why perhaps most of you were motivated to study the law, and, yet, that's not a reality for so many of our people. And, so, in addition to locating our effort in relation to other bigger structural things that you are all thinking about, I want to emphasize that the reason our project is called Modest Means Incubator Project is that we are not specifically talking about legal aid solutions.”*

*“I was remarking just the other day ... just reading the newspaper that 70 percent of the things that are covered in the newspaper are about law... I don't know if that's as true in other nations, but we are a very ... law fixed society. And so the nature of the needs that*

*we have -- I would just look at what we just went through with respect to mortgages and foreclosures -- is it reasonable to ask ordinary people to go through that without expert advice of some sort?"* **April 30, 2014 CJSTF Hearing**

### **Sue Talia, Certified Family Law Specialist and Private Family Law Judge**

*"When we have lawyers who can't get work and thousands of people who need legal assistance there's something wrong systemically, and I commend this task force for looking at the issue from all angles and looking for systemic solutions. It is critical that we develop new deliver methods which enable lawyers to cost effectively to provide necessary services to civil litigants, and I think one of the most promising of these is limited scope representation."* **April 30, 2014 CJSTF Hearing**

### **Bonnie Hough, Managing Attorney Administrative Office of the Courts**

*"[A] really important feature of the self-help center is they are a key point for triage. One of the things that they are trying to do is help people to understand what they can effectively do on their own and what things they need assistance with."* **April 30, 2014 CJSTF Hearing**

### **Hon. Chief Judge Lippman, New York State**

*We know that at best we are meeting 20 to 25 percent of the needs of low-income people for legal services. And really these are services dealing with the necessities of life, the roof over somebody's head, their physical safety, the well-being of their families, their livelihoods. These are the essentials of life that people today, overwhelmingly; people without means are lacking representation.*

*"We see ... nonlawyers as housing counselors in foreclosure proceedings, and we're starting to use it in other areas. We, in New York, base to some degree on the work of Professor Hadfield at USC and the British model. They opened up a new world saying ... this is not the only way to do this.*

*What we now have is a group that we call "Navigators," who go with the litigant into the courtroom. They provide moral support for the litigant, they provide information. They will not argue in front of the judge, but if the judge asks them a question, they will certainly answer it."* **May 28 2014 CJSTF Hearing**

### **Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings**

*"We're kind of typical for a state school. . . . The average amount that a law student will pay in one year is over \$70,000 and if they were to borrow all of that, the cost is \$213,000 over a three-year period. So this does have a burdensome effect on students and it does cause them to give thought as to whether or not they want to incur the cost that is required in order to join the profession."*

*"I think you're beginning to see the complexity of the loan repayment -- of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment*

*how confusing this could be. Where do they even find the information that they need to determine what their interest rate is and what it has been over time and if they have undergraduate debt and graduate debt, it is very complex. . . . You know, we want to help them. This is our passion. We've all been students. We want to help students and we want them to understand this and we are in a unique position as administrators to understand the mechanics of all this and how it works and be able to explain it to students, but it adds a burden on us to do this, so therein lies the catch for us.” August 26, 2014 CJSTF Hearing*

**Heather Jarvis, Student Loan Expert**

*“[T]he programs are so complicated, so convoluted, the system is difficult to navigate that I think the programs are far less useful and effective than they might be, but they do exist.”*

*“In my view, the objective assistance and information for student loan borrowers is completely inadequate. . . . I think schools are less focused on providing support for their graduates when it comes to selecting repayment options than they are in providing the financial aid to begin with. . . . It needs to be simplified considerably. . . . I think that schools can and should invest more in providing the resources that would be necessary to give more personalized advice to their graduates.” August 26, 2014 CJSTF Hearing*





# Civil Justice Strategies Task Force Report & Recommendations

## APPENDIX D: Reports of the CJSTF Subcommittees

March 2015





# “NOW” REPORT

The “Now” Group was tasked with a review of the current access environment in order to identify what approaches are working now and what may be scalable or can be replicated.



## INTRODUCTION

For both low- and moderate-income persons, the concepts of access to justice and delivery of legal services should not be viewed as synonymous with access to an attorney, access to judicial process, or individual representation. For both groups, a broad range of strategies, services, providers, and forms should be available.<sup>6</sup>

A full 25 years ago, these were the words of the ABA Conference on Access to Justice. And despite the realization *then* that a complex mix of systems and providers are needed to meet the Justice Gap, it still persists.

The Civil Justice Strategies Task Force had no illusions it could solve this long-standing problem overnight. But the “Now” Group took on the examination of these issues to further kick the ball down the field to make some progress, and sought to look “broadly... [at] innovations in courts, the bar, legal aid, and community that make it easier for people to obtain access to justice institutions, and just results within those institutions.”<sup>7</sup>

The justice gap that exists for both poor and the middle class is widely documented. For example, a 2009 Justice Gap report issued by the Legal Services Corporation notes that roughly half of the people who seek help from LSC-funded legal aid providers are denied service.<sup>8</sup>

As stated in a 2009 Symposium “Access to Justice: It’s Not for Everyone,” the middle-class in the United States is often priced out of the legal system because their income level disqualifies them from being eligible for legal aid services, but they cannot actually afford to hire an attorney.<sup>9</sup>

Lan W. Houseman, Senior Fellow for Law and Social Policy, at CLASP states in his “Civil Legal Aid in the United States an Update For 2013,” (t)he trends in US civil legal aid over the last 12 years continued through 2013. We saw increases in state funding as well as from other funding sources. However, we saw decreases in both IOLTA funding in 2012 and there are likely more to come in 2013. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet, the basic civil legal aid system has not closed the “justice gap.” Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals, lay advocates, law students and private attorneys available to meet the huge needs of low-income persons for advice, brief service and full representation.”

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<sup>6</sup> American Bar Association Consortium on Legal service and the Public and Tulane law School, Civil Justice an Agenda for the 1990s, Report Of The American Bar Association National Conference On Access To Justice In The 1990s (June 1989), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/accessconf.authcheckdam.pdf> (last visited December 3, 2014).

<sup>7</sup> Richard Zorza’s Access to Justice Blog, <http://accesstojustice.net> (last visited December 3, 2014).

<sup>8</sup> Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans (2009), available at <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf> (last visited December 3, 2014).

<sup>9</sup> Sande L. Buhai, “Access to Justice for Unrepresented Litigants: A Comparative Perspective,” 42 LOY L.A. L. REV. 979 (2009).

## **Testimony Presented To, And Information Acquired By, The Task Force to Learn About and Understand Existing Efforts**

### **A. The Task Force's Information Gathering**

1. Witnesses Interviewed and Materials Reviewed
2. For nearly a year, the Task Force met in public hearings to learn from a diverse group of state and national experts and reviewed and analyzed numerous reports and articles related to the major existing efforts to provide civil legal services to low and moderate income Californians.
3. The witnesses, who testified about current legal services for those of low and moderate incomes over the course of the Task Force hearings, are included in Appendix E.

### **B. "Now Group Recommendations**

1. Funding: recommend that the State Bar boost promotion of the Justice Gap Fund in order to increase donations to the fund by lawyers and law firms.
2. Incubators/Modest Means: recommend that the State Bar track the trajectory of incubator participants; and recommend that the State Bar help create a framework (e.g., mentors, toolkits, forms, etc.) to assist modest means practitioners.
3. Unbundling: recommend that the State Bar do more to promote and incentivize limited scope representation.
4. Improved Coordination: recommend greater coordination between the State Bar and Judicial Council, including in efforts to link the various stakeholders involved in providing affordable legal services.
5. Civil Gideon: recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Land Lord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what's working in the pilot projects, publicly support them, and help to scale them.

### **C. Inventory & Description of Existing Efforts**

The Now subcommittee compiled an inventory of the major efforts currently underway in California to assist those who fall into the justice gap. This is not an exhaustive list, nor could it ever be, since the Task Force learned that there are

constant ongoing efforts to bring new and better ways of providing legal services all the time. We are proud to have been the recipients of this knowledge and hope that the work of the task force does some justice to the efforts of so many throughout our state.

## **Inventory & Description of Existing Efforts**

### **1. LEGAL SERVICES FUNDING (CALIFORNIA)**

The Legal Services Trust Fund Program of The State Bar of California makes grants to nonprofit organizations that provide free civil legal services to low-income Californians. Four primary sources provide funds for the program: Interest on Lawyer Trust Accounts (IOLTA); California Equal Access Fund (EAF); the Justice Gap Fund and State Bar Dues Voluntary Contribution for Legal Services. In addition to these funding sources, the Campaign for Justice works to raise awareness about the critical importance of legal services and to encourage increased support and funding.

- **IOLTA**

Legislatively created in 1981, the IOLTA program provides funding for almost 100 nonprofit legal aid organizations, including direct legal service providers and support centers. IOLTA revenue has totaled over \$360 million since inception, with high years over \$20 million but, due to low bank interest rates, recent years below \$5 million.

- **California Equal Access Fund (EAF)**

The State Budget Act allocates funds to the Equal Access Fund “to improve equal access and the fair administration of justice.” The Fund is given to the Judicial Council to be distributed through the State Bar’s Legal Services Trust Fund Program.

Since 2006, \$4.80 of each civil filing fee collected by local courts is added to the Equal Access Fund. Filing fee revenue has ranged from approx. \$5.3 million to \$6.75 million annually, bringing the Equal Access Fund distribution to roughly \$16 million annually.

Ten percent of the funds available for distribution support Partnership Grants to legal services programs “for joint projects of courts and legal services programs to make legal assistance available to pro per litigants.” In 2014 approximately \$1.5 million were distributed

Partnership Grants are awarded through a competitive process, as distinct from the administration of other State Bar Trust Fund Program grants. The Trust Fund Commission and Judicial Council have complete discretion and flexibility to distribute Partnership Grant funds in the way they deem most appropriate. Grant award

recommendations are approved by the Judicial Council.

- **Justice Gap Fund**

The Justice Gap Fund was created by the California Legislature in 2006. It allows the State Bar to collect voluntary contributions from its members and others to help fund legal aid organizations statewide.

The annual dues bill includes a voluntary check-off box and a suggested donation amount of \$100 contribution to the Justice Gap Fund. Distributions can be made year-round through the Campaign for Justice Website. Annually, only about 5% of lawyers make a contribution to the Justice Gap Fund.

The donations received through the Justice Gap Fund are combined with revenue from Interest on Lawyers' Trust Accounts (IOLTA) and distributed on a formulaic basis to all California legal aid organizations that qualify for grant funding.

- **State Bar Dues Voluntary Contribution to Legal Services**

In addition to the Justice Gap Fund, each year since 2011, the State Bar Dues Bill has included an additional line-item enabling attorneys to make a small contribution for legal services. In 2011, the amount was \$10; in 2012 and 2013, the contribution was increased to \$20; in 2014 it was \$30 and in 2015, the amount was increased to \$40. Over \$15 million for legal services has been raised through the State Bar Dues Bill.

- **Campaign for Justice**

The Campaign for Justice was created by a network of legal aid organizations, private lawyers, the Office of Legal Services of the State Bar of California and the Legal Aid Association of California, united in a mission to spread awareness about the importance of legal aid and of increasing the resources available to meet the needs of indigent Californians. The goal of the Campaign for Justice is to increase funding for the important network of legal aid organizations that give a voice and representation to Californians who need help accessing justice.

The Campaign for Justice consists of four key components: educating policymakers about the importance of legal assistance, encouraging banks to maximize interest and waive fees on IOLTA accounts, increasing individual contributions to the Justice Gap Fund and legal assistance organizations, and encouraging pro bono services that leverage legal aid resources. By expanding awareness of the importance of legal assistance, the Campaign for Justice seeks to increase local and statewide legal aid resources so Californians are not denied justice simply because they cannot afford an attorney.



## **2. LEGAL SERVICES CORPORATION**

The Legal Services Corporation (LSC) is the single largest funder of civil legal aid in the country. LSC funds a total of 134 legal aid organizations, including 11 in California. LSC promotes equal access to justice by awarding grants to legal services providers through a competitive grants process; conducting compliance reviews and program visits to oversee program quality and compliance with statutory and regulatory requirements as well as restrictions that accompany LSC funding, and by providing training and technical assistance to programs.

In 2014 LSC provided \$365 million nationally for civil legal assistance to low-income people – down from \$420 million four years ago. The reduction in LSC funding has resulted in staffing and service cuts in legal services programs in California and across the country that depend upon LSC funding.

## **3. PRO BONO**

Lawyers in the United States are recommended under American Bar Association (ABA) ethical rules to contribute at least fifty hours of pro bono service per year(s). Some state bar associations, however, may recommend fewer hours. Rule 6.1 of the New York Rules of Professional Conduct strongly encourages lawyers to provide at least 50 hours of pro bono service each year and quantifies the minimal financial contributions that lawyers should aspire to make to organizations providing legal services to the poor and underserved.

In 1989 (amended June 22, 2002), the State Bar of California's Board of Governors, adopted a Pro Bono Resolution urging attorneys to devote at least 50 hours per year to pro bono service; that law firms and governmental and corporate employers support the involvement of associates and partners in pro bono; that law schools encourage the participation of law students in pro bono activities; and that attorneys and law firms contribute financial support to not-for-profit organizations that provide free legal services.

The Chief Judge of New York has also instituted a requirement that applicants who plan to be admitted in 2015 and onward must complete fifty hours of pro bono service in order to qualify. All attorneys who register must report their voluntary pro bono hours and/or voluntary contributions.

In California, the Task Force on Admissions Regulation Reform (TFARR) has recommended a competency training requirement, fulfilled either at the pre- or post-admission stage, where 50 hours of legal services is specifically devoted to pro bono or modest means clients.

While providing pro bono service is a core value of the legal profession, pro bono, legal work currently accounts for a very small percentage of legal work performed in the country.

#### **4. SELF-REPRESENTATION**

A Self-Represented Litigant is a person (party) who advocates on his or her own behalf before a court, rather than being represented by an attorney. These litigants are also known as pro se or pro per litigants.

California's courts are facing an ever-increasing number of litigants who go to court without legal counsel, largely because they cannot afford representation. Self-represented litigants typically are unfamiliar with court procedures and forms as well as their rights and obligations, which leaves them disadvantaged in court and requires significant court resources.

- **Task Force on Self-Represented Litigants**

The Judicial Council established the Task Force on Self-Represented Litigants in 2001 to coordinate the statewide response to the needs of litigants who represent themselves in court. The task force drafted a statewide action plan to serve self-represented litigants that was based in large part on local courts' own plans to add programs and services for self-represented litigants.

- **Self-Help Centers**

Effective January 1, 2008, the Judicial Council adopted rule 10.960 of the California Rules of Court, which states that court-based, self-help centers are a core function of the California courts. Self-help centers are located in or near the courthouse. They are staffed by attorneys and other qualified personnel under their direction to provide information and education to self-represented litigants about the justice process. While courts in every county have self-help centers, services have been curtailed due to budget cuts.

- **Family Law Facilitators**

Many self-help centers are combined with the family law facilitator program in their court. Effective January 1, 1997, Family Code section 10002 established an Office of the Family Law Facilitator in each of the 58 counties. The Judicial Council administers the program, distributing funds to these court-based offices that are staffed by licensed attorneys.

- **Family Law Information Centers**

The Judicial Council administers three pilot project centers in the Superior Courts of Los Angeles, Sutter, and Fresno Counties. The centers are supervised by attorneys and assist low-income, self-represented litigants with forms, information, and resources concerning divorce, separation, parentage, child and spousal support, property division, and custody and visitation.

- **JusticeCorps**

The JusticeCorps program began in 2004 as an innovative partnership of the AOC, AmeriCorps, the Superior Court of Los Angeles County, various University of California (UC) and California State University (CSU) campuses, and community-based, legal aid service providers. Since 2004, the Superior Courts of Alameda and San Diego Counties, as well as the Counties of San Francisco, San Mateo, Santa Clara, Placer, Yolo, and Sacramento, have joined the JusticeCorps. Members are recruited from UC and CSU undergraduate programs. They undergo intensive training in family law, small claims, and housing law before being placed in legal self-help centers to provide legal information to self-represented litigants under the direction of an attorney.

- **Online Forms and Document Assembly Programs**

California has standardized statewide forms for nearly all matters involving self-represented litigants. All of the forms can be completed online and saved as a PDF.

- **Websites**

The Judicial Council provides a comprehensive “Online Self-Help Center” for court users who do not have attorneys and for others wishing to become better informed about the law and court procedures. The entire site has been translated into Spanish and provides over 4,000 pages of information in each language on topics including family law, landlord/tenant, small claims, guardianships, conservatorships, domestic violence, elder abuse, and a host of other topics. In addition to the court’s website, the Legal Aid Association of California (LAAC), with funding from the State Bar, operates LawHelpCA.org, a website that provides information about common legal issues and a directory of organizations that provide free or low-cost legal advice and representation.

## **5. RIGHT TO COUNSEL - CIVIL GIDEON**

There is a national movement underway to guarantee a right to counsel in certain civil legal cases. Modeled after the U.S. Supreme Court case of Gideon v. Wainwright, which guaranteed a right to counsel in criminal cases, the effort is being pursued along multiple fronts.

In 2006, the American Bar Association unanimously adopted a resolution supporting the

right to counsel in basic human needs cases. In addition to being co-sponsored by 13 state and local bar associations, the Resolution's goals were subsequently adopted in an additional six states. The ABA followed up in 2010 with two documents: a Model Access Act (which provides implementation suggestions for states establishing new rights to counsel), and Basic Principles of a Right to Counsel in Civil Legal Proceedings.

Information about status of right to counsel in each state can be found at the National Coalition for Civil Right to counsel at <http://www.civilrighttocounsel.org/> .

California provides counsel in a limited number of civil contexts, for example, removal of a child from indigent parents or termination of custody (See NCCRC site for examples)

- **California - Sargent Shriver Civil Counsel Act (AB 590 - 2009 - Feuer)**

With the passage of the Sargent Shriver Civil Counsel Act (AB 590, Feuer) in 2009, seven pilot projects selected by the Judicial Council of California through a competitive RFP process provide representation to low-income Californians on critical legal issues affecting basic human needs. The pilot projects are operated by legal services nonprofit corporations working in collaboration with local courts.

Pilot projects started in fiscal year 2011–2012 and are initially authorized for a three-year period, subject to renewal. All pilots and funding will terminate after six years (in 2017) unless the Legislature extends the statutory authority.

On August 21, 2014, the Sargent Shriver Civil Counsel Act Implementation Committee recommended that the Judicial Council award \$7,738,000 million in grants to the following qualified legal service organizations and court partners for pilot projects:

1. Bar Association of San Francisco Voluntary Legal Services Program Superior Court of San Francisco County  
Child Custody Pilot Project ..... \$394,364
2. Greater Bakersfield Legal Assistance Superior Court of Kern County  
Housing Pilot Project ..... \$536,282
3. Legal Aid Society of San Diego  
San Diego Voluntary Legal Services Program Superior Court of San Diego County  
Housing and Child Custody Pilot Project ..... \$2,359,265
4. Legal Aid Society of Santa Barbara County Superior Court of Santa Barbara County

Northern Santa Barbara County Housing and Probate  
 Guardianship/Conservatorship  
 Pilot Project ..... \$761,714

5. Legal Services of Northern California Superior Court of Yolo County  
 Housing Pilot Project ..... \$302,385

6. Los Angeles Center for Law and Justice Superior Court of Los Angeles County  
 Child Custody/Domestic Violence Project ..... \$843,419

7. Neighborhood Legal Services of Los Angeles County Superior Court of Los  
 Angeles County  
 Housing Pilot Project ..... \$2,540,571

- **San Francisco Justice and Diversity Center Civil Right to Counsel**

In 2012, a city ordinance signed by Mayor Ed Lee in early April has made San Francisco the first city in the nation to create a guaranteed right to civil counsel. The ordinance, passed in March by the Board of Supervisors, authorizes a one-year Right to Civil Counsel pilot program but restricts the city's financial commitment to paying one staff person to coordinate the city, clients, and pro bono lawyers. To be eligible for free counsel, a person would need to live within 200 percent of the federal poverty line and have a case touching on "a basic human need," such as housing, safety, or child custody.

- **Other Right to Counsel Efforts**

In other states, efforts are driven mostly by court decisions, private bars, legal service organizations, and court-created justice commissions. For example, in 2009, the Philadelphia Bar started civil Gideon pilot projects in mortgage foreclosure and child custody cases. In 2007 the Boston Bar conducted a similar project with regard to eviction cases.

In 2013, a special Maryland state task force began a one-year mission to evaluate the feasibility of providing a right to legal counsel for Marylanders who are involved in certain kinds of civil disputes. They will study whether low-income Marylanders should have the right to counsel at public expense in basic human needs civil cases, such as those involving shelter, sustenance, safety, health, or child custody. Established by the legislature and signed into law by the Governor in 2013, the task force was approved to run until Sept. 30, 2014, when it will report its findings and recommendations.

## 6. UNBUNDLING

“Unbundling,” sometimes referred to as “limited scope representation is a way to spread scarce legal talent, especially in the context of providing services to people who cannot afford to pay for full representation. For example, a lawyer may prepare a document for someone or represent people through one court appearance or settlement negotiation.

Attorneys may provide limited scope representation *pro bono* or charge a fee for services performed. When Limited scope representation is done on a fee paid basis, the attorney is paid a fee for the part of the case s/he handles. This can be done on a flat fee (fixed charge for drafting a motion, filing a divorce, or similar discrete task), or hourly, at a full rate or reduced rate. The process concentrates the attorney’s time and expertise where it will be most effective, and limits the cost to the client to those tasks where professional assistance is most critical.

Unbundled representation sometimes requires approval from the court because it could be seen as violating professional ethics for a lawyer to be involved in a case on such a limited basis. California permits lawyers to provide unbundled legal services. The Judicial Council has created forms for use in both general civil cases and in family law cases to inform the court of such representation.

## 7. INCUBATORS

Legal incubators are emerging as models that enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices. The alpha incubator was established at the City University of New York over a decade ago. Recent changes in the economy have led to the creation of similar models by both law schools and bar associations.

Incubator programs are examples of what law schools and other stakeholders can do to respond to trends in the profession, to community needs, and to legal education trends. Recent trends in the profession include a decrease in the number of paid lawyer positions. Like all other graduates, law graduates are facing the prospect of creating their own jobs, and incubator programs that respond by enabling students to successfully create their own jobs fill a need. Additionally, with the significant decrease in federally and locally sponsored free legal services, lawyers are needed in community-based practices to provide affordable and innovative services to fill the gap.

The California Access Commission has a current project in which it has provided seed grants to organizations to start or expand incubator programs focused on modest means representation.

## 8. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative dispute resolution (ADR) systems are becoming a mainstay of legal systems around the world, especially within systems of justice suffering from significant backlogs and delay. While arbitration used to be the bastion of most commercial law disputes, today mediation is more widely used in both public and private justice systems. The growth of mediation has prompted some to consider the possibility of the wider use of online dispute resolution (ODR) platforms. Because many ADR systems are in fact reducing case backlogs, the focus has been on the speed of resolution and not necessarily on procedural protections and providing justice

- **Online Dispute Resolution (ODR)**

In a manner similar to ADR at its inception, ODR providers often lack appropriate funding and procedural safeguards. One means to address the former by reducing cost is to automate portions of the system. In fact, some argue that significant cost saving could be realized – and justice may be better served – by removing human neutrals from the equation; in other words, to fully automate some types of justice. As ADR gains wider use, many commentators hypothesize the next generation of ADR will be an ODR platform, which will use an algorithm and possess no neutral human decision maker.

## 9. MODEST MEANS

Modest Means representation provides low-cost legal assistance to individuals who do not qualify for free legal services, but cannot afford the expertise of attorneys at the standard rate.

Some state and local bar associations work to identify and stimulate innovative programs designed to make legal services more readily available to people of average means. Their websites lists programs that they believe are creative initiatives in the delivery of legal services to people who do not qualify for subsidized legal services and yet lack the income to retain traditional legal representation.

Listings may include bar-sponsored programs, lawyer referral services, military-sponsored programs, non-profit initiatives, court-based projects and individual-sometimes entrepreneurial-endeavors.

The ABA maintains a list at the following link of [\*innovative programs to help people of modest means obtain legal help\*](#). In California, a number of lawyer referral services include attorney members who have agreed to accept modest means clients.

## 10. LAW SCHOOL CLINICS

Clinical legal education is an increasingly emphasized component of legal education. In particular, the Carnegie Report, “Educating Lawyers—Preparation for the Profession of

Law,” emphasized the educational value of law clinics. Students and schools increasingly favor clinical education due to the current enrollment and employment challenges for the nation’s law schools. In a recent survey of 156 law schools, there were a total of 1036 distinct live-client law clinics, with an average of 6.6 per law school. Nearly 80% of the respondent schools noted that demand for live-client clinics increased during the prior five years, 19% reported the demand remained constant during that time period, and less than 1% noted a decrease in demand.<sup>10</sup>

Nationwide, more than one thousand faculty teach and supervise clinic students in increasingly diverse fields. Clinic students at all ABA-accredited law schools in the 2009–2010 academic year provided over 1.38 million hours of free civil legal services and represented almost thirty thousand civil clients.<sup>11</sup>

## **11. LIBRARIES**

With increasing costs of providing legal reference resources and often limited library budgets, libraries are collaborating with courts to provide services to pro se litigants. Because libraries typically allow access to public computers and because library staff are already trained in assisting the public with research issues, they are a natural partner for providing self-help services.

One example of effective partnering in support of building up public libraries as access-to-justice gateways is Montana, in which the state law library has systematically reached out to public libraries and trained their staff in how to provide informational assistance.

Another example is Illinois, in which Illinois LegalAid Online has, with funding from the IOLTA (interest on lawyers’ trust accounts) program, placed “out of the box” self-help centers in over 20 public libraries. The program paid for a computer, and the library maintains access to it.

In New York, LawHelpNY, the legal aid Web site that collaborates closely with the court system in posting information, has conducted extensive training of public and law libraries, including the Queens Public Library, which has extensive outreach to patrons with limited proficiency in English.

## **12. LAW LIBRARIES**

Law libraries are seeing a changing user base: in many, if not most, law libraries, the numbers of lawyers and court staff visiting law libraries is decreasing at the same time that an increasing number of members of the public and people without lawyers are approaching law libraries for help. As the number of people without lawyers coming to

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<sup>10</sup> Santacroce, David A., co-author. "Report on the 2010-11 CSALE Survey of Applied Legal Education.", co-author. R. R. Kuehn, co-author. Ann Arbor: Center for the Study of Applied Legal Education, (2012) (page 7).

<sup>11</sup> Santacroce & Kuehn, Supra Note 10 at 12 (page 20).



law libraries continues to increase, like courts, law libraries must adjust the delivery and availability of its services.

In order to carry out this mission, law libraries will need to move towards providing a broader range of services, including assisting individuals to diagnose their legal problems; generating and providing legal information appropriate to a wide range of constituencies with varied education and literacy levels; providing tools that assist litigants prepare and present their cases to the courts; and information and assistance designed to help with longer term legal planning.

There are examples of law libraries across the country that already have embraced this role, and have experimented and innovated to make a major contribution to access to justice. These changes have been made possible by broad changes taking place in courts, in technology, and in the conceptual understandings of the way that legal information is provided, particularly to those without lawyers.

### **13. VOLUNTEER LAWYER'S PROGRAMS**

#### **New York State Courts**

The New York State Courts' Access to Justice Program is the statewide pro bono initiative intended to encourage and increase attorneys' free legal services for New Yorkers to provide legal assistance to New Yorkers of limited means who enter their courts without representation.

The New York State Courts Access to Justice Program provides pro bono legal services to litigants in the following areas:

- Consumer Debt
- Family Court matters
- Foreclosure
- Housing
- Uncontested Divorce

Attorneys who volunteer in these programs receive free training, with CLE credit, in exchange for 12 hours of service at the attorneys' convenience, in one of the Access to Justice Programs. The volunteers are supervised by court attorneys, or trained attorneys from organizations that work in partnership with the courts.

#### **14. Immigration**

- **San Francisco US Immigration Court “Attorney of the Day” (AOD) Program**

The "Attorney of the Day" program is unique to the San Francisco based US Immigration court. The Bar Association of San Francisco's Lawyer Referral Service has

administered this program for the court for over 25 years. It has recently garnered attention because of the "surge" dockets for unaccompanied minors and families with minors from Central America and Mexico. There are three immigration courts in CA: San Diego, Los Angeles and San Francisco. Although there has been interest from other states in the 9th circuit to develop an AOD program, it has not often been replicated.

Under the AOD program, the BASF maintains a panel of experienced immigration attorneys who have agreed to provide pro bono limited scope representation to respondents in removal proceedings (deportation) at their Master Calendar hearings (the initial hearing). BASF produces a calendar for the court of the attorneys who are available. While they usually schedule 2 attorneys per day for the court, currently with the surge dockets, they are scheduling up to another 8 attorneys per day, and given the expanded need, are looking to recruit more experienced attorneys for the AOD program.

This program fell naturally into a Lawyer Referral Service because they have experience standards that attorneys must meet in order to participate. BASF's pro bono application is on their website and they work closely with the immigration bench and administration to monitor quality and the reliability of the attorneys. BASF also works with the court and model practitioners to modify the pro bono application as needed.

- **Public Defender Immigration Representation Project:**

### **Alameda County**

On January 21, 2014, the Alameda County Public Defender's Office made history by launching California's first public defender immigration representation project. This marks the first time that a county public defender's office in California has appeared on behalf of clients in immigration court. Public defender offices in New York City were the first in the nation to do so.

This new position is a direct response to the lack of procedural safeguards available to noncitizens in removal proceedings, including the lack of a right to appointed counsel for indigent noncitizens facing deportation. What happens in criminal court can have disproportionately punitive consequences in immigration court, and this new role recognizes that effective representation does not end at the courthouse doors. The Alameda County Office of the Public Defender sees this new role as an important shift toward a more holistic model of indigent defense, and invites other public defenders to follow in its footsteps.

### **San Francisco County**

In July 2014, the San Francisco County Office of the Public Defender launched the second public defender immigration representation project in California. The San

Francisco Public Defender's office hired a full-time civil immigration attorney to help clients facing deportation or similar consequences.

The attorney will advise trial attorneys on the immigration consequences in cases involving criminal charges against non-citizens, conduct trainings and outreach, and represent some public defender clients in civil proceedings in immigration and federal court.

Federal legislation passed in 1996 expanded the range of criminal dispositions that can trigger deportation and mandatory detention. Meanwhile, current enforcement trends mean non-citizens with criminal convictions are more likely to be arrested during federal immigration sweeps.

On August 27, 2014, San Francisco officials announced that it would provide funding to help immigrants facing deportation to obtain an attorney. The city's \$100,000 will go to the nonprofit Lawyers' Committee for Civil Rights, which will use it to provide free legal representation for immigrants living in the country illegally.

The initiative is an expansion of the city's Right to Civil Counsel program that had focused on tenants facing evictions.

## **15. Lawyer Referral And Information Services (LRIS)**

A lawyer referral service refers potential clients to attorneys. The lawyer referral service staff interviews individuals and, if they have a legal problem, will match them with a lawyer who is experienced in the appropriate area of law. The client then sees the lawyer for an initial consultation or speaks to the lawyer on the phone for free or for a low initial consultation fee.

In California, lawyer referral services must be certified by the State Bar and must conform to certain standards adopted by the California Supreme Court.

Some lawyer referral services are helping to bridge the justice gap with Reduced Fee or Modest Means Panels. Clients who call the referral line, meet the income guidelines and do not have a case that might be accepted on a contingent fee basis, are matched with attorneys who have agreed in advance not to charge more than a set amount per hour for their services. Reduced Fee or Modest Means Panels are designed to assist people whose income is too high for free civil legal aid, but who cannot afford to pay an attorney's standard rate.



# “NEW” REPORT

The "New" Group focused on innovations that currently are being considered or implemented in other jurisdictions.



## **“New Group” What More Can We Do?**

### **Introduction**

Access to justice is a problem for many members of the public and there is a growing justice gap. The current means for the provision of legal services have not evolved sufficiently to address this gap and, as such, this failure has effectively opened the door to ancillary providers of legal services and nonlawyers to satisfy the unmet need for legal services through a multitude of means including the use of websites, online self-help tools, and data analytics.

Consequently, the "New Group" focused on innovations that currently are being considered or implemented in other jurisdictions including: Alternative Business Structures; technological innovations; legal process outsourcing (e.g., research, document drafting and review, e-discovery, etc.); limited license legal technicians; Court Navigators; court re-engineering; non-traditional "legal service" providers; and private funding of access to justice projects.

During its hearings, the task force heard from a diverse group of experts regarding innovations that are occurring in other jurisdictions, including: Professor Gillian Hadfield, University of Southern California, Gould School of Law; the Honorable Jonathan Lippmann, Chief Judge of the New York Court of Appeals; Steve Crossland, Former President, Washington State Bar & Chair of the Limited Licensing Board; Veyom Bahl, Program Officer, Robin Hood Foundation - funding NY Immigrant Justice Corp; Margaret Hagan, Fellow at the Stanford Center for Internet and Society; Colin Rule, CEO of Modria.com, an online dispute resolution service provider, and non-resident Fellow at the Center for Internet and Society at Stanford Law School; and Deborah Rhode, Ernest W. McFarland Professor of Law, Stanford Law School.

After learning about a range of innovations, the "New Group" focused its discussions in four areas:

(1) Limited License Legal Technicians; (2) efforts to re-engineer the court system; (3) alternative business structures; and (4) court navigator programs. Below are summaries of these issues followed by the "New Group" recommendations for California.

### **1. Washington State's Limited License Legal Technician Program**

In 2011, the World Justice Program issued a Rule of Law Index which ranked the United States 21<sup>st</sup> out of 66 countries studied in providing access to civil justice and 20<sup>th</sup> out of 23 countries in its income group.<sup>12</sup> As the justice gap widens, some states have taken bold steps in initiating programs which may assist those in need of legal services, but who cannot afford a lawyer.

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<sup>12</sup> Mark David Argast, Juan Carlos Botero and Alejandro Ponce, The World Justice Project Rule of Law Index, The World Justice Project1, 111 (2011)

On June 15, 2012, the Washington State Supreme Court voted 6-3 to allow non-lawyers to engage in limited forms of practice in the state of Washington.<sup>13</sup> The non-lawyers have been termed, Limited License Legal Technicians (LLLT). After a quite lengthy and heated debate, the Washington Court was persuaded to adopt the rule based upon, among others, two primary concerns. In recognizing the need, the Court noted the complexity of the civil legal system, and recognized that it is unaffordable not only to low income people, but people of moderate income as well (defined as families with incomes between 200% and 400% of the poverty level).<sup>14</sup> The Court further expanded that poor people with legal problems “seek but cannot obtain help from an overtaxed, underfunded civil legal aid system...With moderate income, people with legal problems find the “existing market rates for legal services...cost prohibitive.”<sup>15</sup>

In January 2013 the LLLT Board began the process of picking a practice area to which the LLLT Rule would be applied initially, with expansion to other practice areas in the future. The area of family law was initially chosen as it was understood to be one of the areas of highest unmet need.<sup>16</sup> As Washington State Supreme Court Justice Barbara Madsen wrote, “No one has a crystal ball,” but potentially, “the public will have a source of relatively affordable technical help with uncomplicated legal matters.”<sup>17</sup>

When deciding to adopt the LLLT program, the Court took note of the public protection issue. The Court was aware that Washington State is not devoid of the fraudulent practices of many non-lawyer businesses, and stated that another focus was to keep in check “the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to ‘clients’ and to the public’s interest in having quality civil legal services provided by qualified practitioners.”<sup>18</sup>

Under Washington’s rule, LLLT’s may assist litigants in completing legal forms, review and explain pleadings, and further apprise clients of procedures and timeline. LLLT’s, however, cannot represent litigants in court proceedings, formal administrative proceedings, or formal dispute resolution processes. Moreover, they are prohibited from communicating with another person or lawyer on behalf of the client.

The educational requirements to become a LLLT in Washington State are quite rigid. Applicants must have a college degree in “paralegal/legal assistance studies” and a minimum of two years’ experience as a paralegal/legal assistant doing substantive law related work under the supervision of a lawyer or a post baccalaureate certificate

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<sup>13</sup> *Adoption of New APR28-Limited Practice Rule of Limited License Technicians*, Order No. 25700-A-1005, 1,1-1 (Wash, 2012) See, <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>

<sup>14</sup> Washington Supreme Court Task Force on Civil Equal Justice Funding, Civil Legal Needs Study at 23 (Fig1), <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

<sup>15</sup> APR 28 Decision, *supra* note 3, at 4

<sup>16</sup> Crossland, Steve Restore Access to Justice Through Limited License Legal Technicians, GPSolo, Vol. 31 No. 3, Accessed December 6, 2104,

[http://www.americanbar.org/publications/gp\\_solo/2014/may\\_june/restore\\_access\\_justice\\_through\\_limited\\_license\\_legal\\_technicians.html](http://www.americanbar.org/publications/gp_solo/2014/may_june/restore_access_justice_through_limited_license_legal_technicians.html)

<sup>17</sup> *Adoption of New APR 28-Limited License Legal Technicians*, Order No. 25700-A-1005 (Wash, 2012)

<sup>18</sup> *Id* at 9



program in paralegal/legal assistant studies and three years' experience as a paralegal/legal assistant doing substantive related work under the supervision of a lawyer. LLLT's are also held under the same standard of care as a Washington lawyer (See, Attachment 1, *Pathway to LLLT Admission*, admission procedure flowchart).

Consistent with Washington State's General Rule 24, (the Washington Supreme Court rule establishing the Practice of Law Board)<sup>19</sup> the rule establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the "practice of law." Such activities are subject to exclusive regulation and oversight by the Washington State Supreme Court. The rule establishes the regulatory framework to allow LLLT's the opportunity to practice. Hence, GR 25 establishes:

- certification requirements (age, education, experience, pro bono service, examination, etc.);<sup>20</sup>
- specific types of activities in which a LLLT would be allowed to engage;<sup>21</sup>
- the circumstances under which the LLLT would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the LLT to perform)<sup>22</sup>
- a detailed list of prohibitions;<sup>23</sup> and
- continuing certification and financial responsibility requirements.<sup>24</sup>

A study of the efficiency of Washington's LLLT program is scheduled to be completed by 2016. Although contracting a LLLT would not be the same as retaining counsel, it offers the potential of helping to close the justice gap. The California State Bar should consider designing a similar program.

## 2. Re-engineering The Court System

The subcommittee felt that there is a need to think about whether court processes are getting in the way of cases being decided on the merits. It was the subcommittee's belief that a multi-disciplinary approach should be considered in streamlining the court system. The concept of reengineering the legal process encompasses, in part, identifying problems with current court processes, rules, forms, and the possibility of determining which legal issues should be taken out of the courtroom and ultimately out of the courthouse.

For example, some task force members queried whether a psychologist or social worker might be better suited than a judge in determining child custody issues in a family law

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<sup>19</sup> [http://www.courts.was.gov/courts\\_rulesd?fa-court\\_rules.display&group=ga&set=GRruleid=gagr25](http://www.courts.was.gov/courts_rulesd?fa-court_rules.display&group=ga&set=GRruleid=gagr25)

<sup>20</sup> APR 28 Decision , supra note 3 (APR 28 (C))

<sup>21</sup> APR28(D)

<sup>22</sup> APR 23(E)

<sup>23</sup> APR 28 (F)

<sup>24</sup> APR 28 (G) AND (H)

matter. Another example of “delegalization” cited, was eBay’s online dispute resolution (ODR) process which offers two services to disgruntled/dissatisfied customers. The first is a free web-based forum which allows users to attempt to resolve their differences on their own, and/or, if necessary, the use of a professional mediator. The cost of a mediator is \$20 for each dispute. One of the presenters to the CJSTF was Colin Rule, who is the Chairman and COO of modria.com, an online dispute resolution service provider in Silicon Valley, and was from 2003 to 2011 the Director of Online Dispute Resolution at eBay and PayPal. Mr. Rule explained that online dispute resolution, as practiced by entities like eBay and Modria, use technology to efficiently and inexpensively resolve a high volume of disputes and that such processes could be explored for the justice system as well.

ODR, if employed by the courts, could be a means of alleviating pressure on the courts and reducing costs through automation of some aspects of the court process. This may be an appropriate issue for further strenuous review by either the Judicial Council or the recently created Commission on the Future of the Courts which “will examine ways to increase the efficiency of adjudicating cases in civil, criminal, traffic, juvenile and family law matters, as well as ways to enhance the underfunded court system’s fiscal stability.”<sup>25</sup>

### **3. Alternative Business Structures**

After a long review process, the UK implemented a new regulatory set-up for legal services in order to foster competition, innovation, and consumer protection, as well as so-called accountable regulatory enforcement (under the Legal Services Act 2007; hereafter “LSA 2007”). These reforms grew out of the Clementi Report (published in December 2004). It argued for alternative business structures (allowing non-lawyers to go into business with lawyers as well as non-lawyers ownership of law firms, including the possibility of public trading of shares in law firms; hereafter “ABSs”), an independent agency to deal with disciplinary complaints (rather than leaving it to self-regulation; currently the Legal Ombudsman and the Office for Legal Complaints), and greater freedom for legal service providers to compete (under the supervision of the Legal Services Board, operational since 2010).

The act is intended to liberalize and regulate the market for legal services in England and Wales, to encourage competition and provide a new consumer complaint mechanism. The LSA also allows alternative business structures (ABSs) with nonlawyers in professional, management or ownership roles. These legal disciplinary practices (LDPs) can have up to 25 percent nonlawyer managers.

The Solicitors Regulation Authority (“SRA”), the independent regulatory body of the Law Society, became a licensing ABS authority in 2007 and started accepting applications for ABS licenses in January 2012.

In the United States, the District of Columbia has permitted a form of non-lawyer

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<sup>25</sup> *Chief Justice Creates Commission on the Future of the Courts*, press release, July 9, 2014

ownership or management of law firms for over 20 years.<sup>26</sup> Anecdotally, these firms believe that there is or will be client demand for the legal services that firms with non-lawyer partners are well-positioned to provide (e.g., family law firms with social workers and family planners on the client service team). In addition, ABS legal companies such as Legal Zoom and Rocket Lawyer have entered the UK market and are regulated there.

Although ABS' may provide financially manageable and perhaps legally sound document preparation services, we believe they are too untested to recommend adoption in California at this time and that there are other alternatives to improving our justice gap. Accordingly, the task force recommends that we continue to monitor the development of ABS' and whether they result in more affordable legal services while providing adequate protection to consumers. The California State Bar Board of Trustees has decided to regularly evaluate developments in this area, including whether emerging companies who provide law-related services should be subject to additional regulation and oversight.

#### **4. New York State Navigator Program**

In his 2014 State of the Judiciary address, New York Chief Judge Jonathan Lippmann acknowledged that there are many tasks only a lawyer is authorized to do, and further acknowledge that there is no substitute for legal representation, stating that a lawyer is trained to analyze the law, advise their clients, and represent them in a court of law. But he asked everyone to keep in mind that there is “a vast pool of poor people with legal problems who cannot afford a lawyer to represent them.”<sup>27</sup> Chief Lippman then suggested that the legal profession look to the medical model wherein patients are routinely assisted by health care professionals other than physicians and announced that “for the first time, the trained non-lawyers, called Navigators, [would] be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court.”

The Navigator program currently operates in the State of New York as a pilot program. Navigators are specially trained and supervised non-lawyers who provide pro bono assistance to unrepresented litigants in both housing and consumer cases. The program permits non-lawyer volunteers to assist litigants to complete legal paperwork and organize documents. They may also accompany litigants to court. Upon court direction, the Navigators may answer factual questions, such as which benefits a person has applied for and whether a certain building is regulated. Navigators are prohibited from giving legal advice; however, they may assist in settlement negotiations outside the courtroom.

Although New York's Navigators are limited in providing assistance in the areas of consumer credit actions and evictions, an expansion of their roles is the subject of a current on-going study. Navigators receive training in the documentation in which they

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<sup>26</sup> Discussion Paper on Alternative Law Practice Structures, ABA Commission on Ethics 20/20, December 2, 2011, page 6.

<sup>27</sup> *Vision and Action in Our Modern Courts*, Jonathan Lippman, Chief Judge of New York, State of the Judiciary, 2014, page 7.

are assisting litigants, however, no formal legal training is provided.

## RECOMMENDATIONS

The goal of the CJSTF “New Group” was to analyze various innovative programs being implemented or proposed by other jurisdictions to provide civil legal services to low and moderate-income individuals. In doing so, the task force reviewed programs in many jurisdictions and particularly in the states of Washington and New York. The task force reviewed their respective advantages and disadvantages, and further dissected and analyzed these programs to determine whether and how they might be adjusted to accommodate the growing number of unrepresented litigants in the state of California.

The recommendations proposed below will, by no means alone, close the justice gap. The task force believes, however, that, if adopted, these recommendations will provide additional legal assistance to individuals in need of assistance and will benefit the court system. As noted by Justice Jonathan Lippmann:

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“. . . beyond having aspiring lawyers help those most in need of legal assistance, further new thinking is required to tackle the crisis in access to legal services for the poor. We must be creative and embrace new ideas about the very manner in which we deliver legal services to the poor as they seek to navigate our legal system.”<sup>28</sup>

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This subcommittee is hopeful that the proposed recommendations outlined herein, will be used as springboard to implement programs that will decrease court congestion, stress, and more importantly, provide a voice for those who would otherwise remain a space in our ever growing justice gap.

### 1. Limited License Legal Technicians (LLLT)

*The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the California Supreme Court and the Judicial Council at the early stages rather than after the design is completed. Because of the profound regulatory impact such a program may have, the State Bar should also address how the issues of governance, oversight and licensing would be handled.*

Other considerations discussed were as follows.

- Narrow subject matter. Some of the subject matter areas suggested by the Task Force members were landlord-tenant, limited jurisdiction consumer cases, and family law (specifically, domestic violence cases).

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<sup>28</sup> *Vision and Action in Our Modern Courts*, Jonathan Lippman, Chief Judge of the State of New York, The State of the Judiciary, 2014

- Regulation. If the State Bar is to be considered as a regulatory body, then its General Counsel must research whether there are potential anti-trust issues. Other entities mentioned as a possible regulatory agency for limited license technicians were the Department of Consumer Affairs and the California Supreme Court.
- Timeline. The Task Force believes it is necessary for the State Bar to establish a realistic time frame as to when a LLLT concept can be developed and implemented.
- Commission on the Future of the Courts. The State Bar should keep the Commission on the Future of the Courts abreast of the LLLT progress.
- LLLT Qualifications/Costs: The Washington State LLLT requirements are quite rigid and perhaps cost prohibitive. The state of Washington has approximately 30,000 lawyers on its rolls. In addition, the state has three primary cities-- Seattle, Yakima and Spokane. The Washington State Bar is working in conjunction with the four law schools in that state and their local community colleges and universities in establishing a curriculum. Attached, herein, is a document entitled, "**Pathway to LLLT Admission**". The minimum qualifications require an associate level degree and 3,000 hours of substantive law related experience (18 months). It was believed that the costs associated with acquiring an associate degree may ultimately be handed down to the consumer. The number of hours applied towards experience should be considered carefully. Regardless, should the State Bar adopt a similar program, it should take into consideration the immediate need for assistance at this time as well as the length of time it may take to get a successful program off the ground.
- Testing: The Task Force believes that LLLT's should complete an examination prior to licensing.

## 2. Alternative Business Structures

*The State Bar should conduct an on-going review of ABS, with particular attention to the impact on pro-bono and public impact litigation as well as their regulatory structure in jurisdictions that adopt these practices. Until this information is available to consider and understand, the State Bar should not proceed with new rules or programs.*

## 3. Systems Re-Engineering

*Systems re-engineering can be interpreted as a broad or narrow concept. With that in mind, the task force recommends a pilot project perhaps in landlord-tenant law or low-level consumer cases. The task force recommends the use of a joint working group of members of the bar, the courts, court users, and perhaps relevant social scientist and tech people, to explore how our legal system can be redesigned to:*

- *streamline the process,*
- *make the legal process easier to use, and*
- *provide protection for the litigant's rights.*

The Task Force further recommends that the State Bar work in concert with the Supreme Court and the newly formed Futures Commission which is currently reviewing the legal and structural challenges in maintaining the efficiency of California Courts.

#### **4. Navigators**

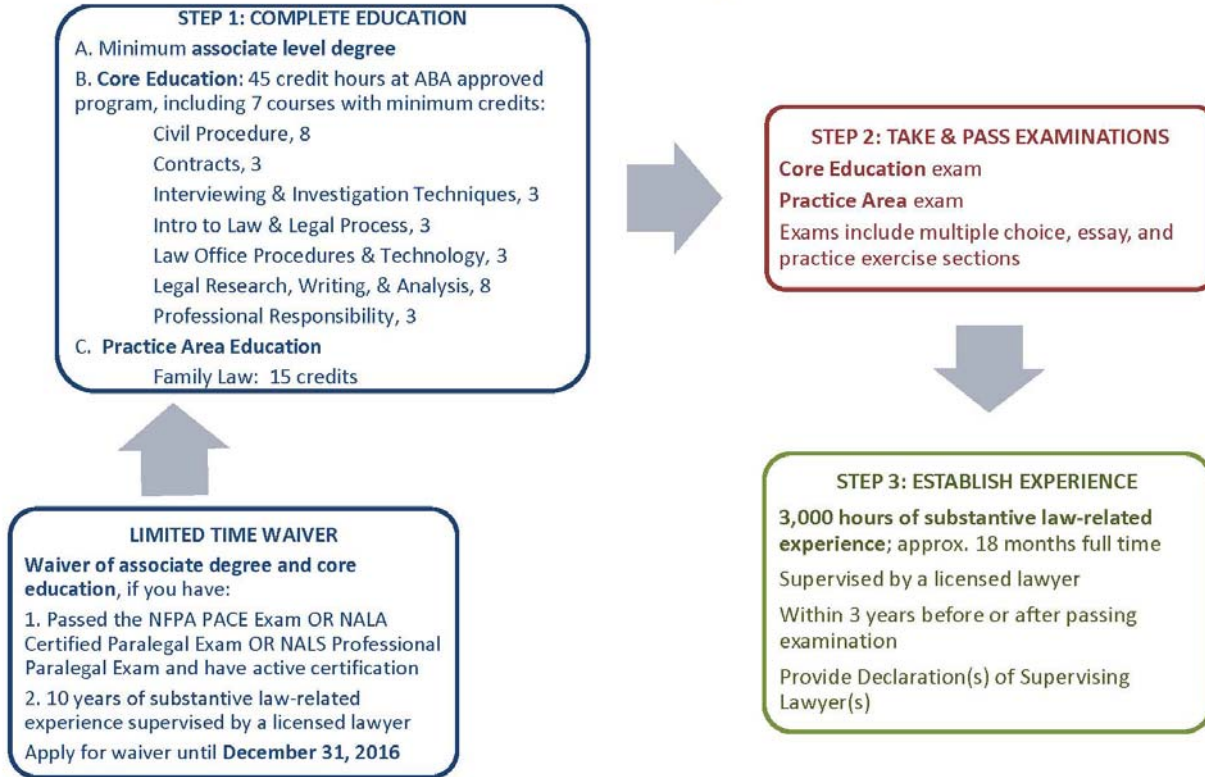
*A pilot program should be designed to operate in one or more self-help centers to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table with the litigant, but not to address the court unless otherwise asked by the court to assist. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.*

- Training: A training model exists which can be implemented to educate Navigators on the California Family Law procedures and practice. The training model is that used by the Self-Help Centers.
- It is recommended that Navigators be knowledgeable in the preparation of court orders and other documents.
- It is recommended that Navigators be sensitive to cultural needs.
- It is recommended that the State Bar keep both the Supreme Court and the Futures Commission abreast of the design and development of this program.
- Volunteer sources: AmeriCorps, law students, community colleges and universities, and other private universities.



WSBA

# Pathway to LLLT Admission



*Limited License Legal Technician Board*  
 Washington State Bar Association • 1325 Fourth Avenue, Suite 600 / Seattle, WA 98101-2539 • 206-727-8289 / fax: 206-727-8313  
<http://www.wsba.org/lllt>

ATTACHMENT 1





# LAW SCHOOL DEBT REPORT

The “Law School Debt Group” examined the intersection of law school debt and access to justice.



## STUDENT DEBT CHAPTER

### A. INTRODUCTION

#### 1. The Disturbing Facts and Figures

In California today, the average student debt for law school graduates as they enter the profession is in excess of \$134,000<sup>29</sup> and the amount of money borrowed by law students has more than doubled over the past ten years.<sup>30</sup> These figures have been driven in no small part by the escalating cost of law schools at levels that have far outpaced inflation. The rise in the cost of a law degree is particularly concerning in a state such as ours, which has numerous public institutions of higher learning; the cost of public law school tuition have increased by a *factor of eight* over the past two decades.<sup>31</sup> Law students who matriculate from private law schools fare no better. Nationally, private law schools have increased tuition by a factor of four in real (inflation-adjusted) dollars over the last 40 years.<sup>32</sup>

While law school debt has been on the rise, we have not seen a commensurate increase in starting salaries for young lawyers. Over the past 15 years, median starting salaries for lawyers in solo and small firm practices, legal services, and the public sector have increased by fewer than 50%.<sup>33</sup> And as recent studies have made clear, even in the wake of an improving economy, far too many of our law school graduates face the prospect of no employment in the legal sector for months (or even years) after graduation.<sup>34</sup>

This troubling scenario is not simply a concern faced by a few – 87% of our state’s law

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<sup>29</sup> See *Which law school graduates have the most debt?*, U.S. NEWS & WORLD REPORT: 2015 BEST LAW SCHOOLS, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Oct. 9, 2014) (averaging debts of California law schools).

<sup>30</sup> Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings College of the Law, Law School Student Debt California Picture ((PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

<sup>31</sup> Heather Jarvis, Student Loan Expert, Civil Justice Strategies Task Force August 26<sup>th</sup> Meeting (PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

<sup>32</sup> See American Bar Association Young Lawyers Division, *Recommendation and Report to the Assembly of the Young Lawyers Division*, n.4 & accompanying text, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/march2014councilmeeting/2014\\_march\\_yld\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_march_yld_report.authcheckdam.pdf) [hereinafter *ABA YLD Report*].

<sup>33</sup> California Young Lawyers Association (CYLA), *The Impact of Debt on New Lawyers* ((PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

<sup>34</sup> Joshua Sebold, *Money Matters: Debt Drags Down Law Grads*, DAILY JOURNAL, June 16, 2014; Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, Illinois State Bar Association, Final Report, Findings & Recommendations on the Impact of Law School Debt on the Delivery of Legal Services, n.3 (June 22, 2013), <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%2003-8-13.pdf> [hereinafter *Illinois Report*].

school graduates leave their years of schooling facing significant student debt.<sup>35</sup> For lawyers who entered the profession in past decades, these figures are almost unimaginable. For our newest lawyers, this debt can factor into the professional choices they make and the career path they take. Some may opt to forego a career in lower paid positions that might allow them to serve low or modest means clients; others may feel pressure to minimize pro bono and “nonpaying” work; and still others may elect to leave the legal profession entirely in an effort to secure any employment that can enable them to cover their student debt.<sup>36</sup> Indeed, a recent ABA study found that nearly one-third of 2013 law school graduates had no full time bar-required or JD-preferred work and 11% of that graduating class was unemployed as of a year after graduation.<sup>37</sup>

This state of affairs may be driving prospective talent away from even considering law school. A recent Wisconsin Task Force study determined that a disheartening 40% of law school graduates surveyed would not choose to attend law school, given what they now know, if they had the choice to make over again.<sup>38</sup> As these sentiments take hold, it is not surprising that law school enrollment figures have dropped over the past few years.<sup>39</sup>

## **2. Broader Implications for Our Community**

As troubling as the law school debt picture may be for our newest generation of lawyers, these concerns are not ones that should be viewed as a self-interested “young lawyer only” problem. Although hard data on the full impact of escalating student debt has yet to be compiled, there are sound reasons to view this issue as one that impacts our *entire community*. Those concerns have been well documented in a number of recent reports by esteemed groups that have studied these issues in other parts of the nation and were also thematically presented by individuals who shared their perspectives with our Task Force (as discussed more fully below). In particular, the impact of student debt on our broader community arises in three contexts: access to justice, public protection, and enhancing the diversity of the legal profession. Each of these issues is integral to the State Bar’s core mission and fundamentally impacts the public, whose interests our organization is committed to protect.

### **a. Access to Justice and Justice Gap Concerns**

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<sup>35</sup> See U.S. NEWS & WORLD REPORT, *supra* note 1.

<sup>36</sup> These sentiments were seen in the survey presented to the Task Force by the CYLA on Aug. 26, 2014 (on file with Civil Justice Strategies Task Force). These same concerns were memorialized in Task Force reports and hearings held in Illinois, Wisconsin and New York. See Challenges Facing New Lawyers Task Force, State Bar of Wisconsin, *Challenges Facing New Lawyers Task Force Report and Recommendations 7* (November 2013), <http://taxprof.typepad.com/files/challenges-facing-new-lawYERS-task-force-report.pdf> [hereinafter *Wisconsin Report*]; Committee on Legal Education and Admission to the Bar, Association of the Bar of the City of New York, *Law School Debt and the Practice of Law* n.23, <http://www.nycbar.org/pdf/report/lawSchoolDebt.pdf> [hereinafter *New York Report*]; See *Illinois Report*, *supra* note 6, at 1-2., as described herein.

<sup>37</sup> See Sebold, *supra* note 6.

<sup>38</sup> See *Wisconsin Report*, *supra* note 8.

<sup>39</sup> See *Illinois Report*, *supra* note 6, at 39.

Student debt restricts the ability of lawyers to pursue career options that would enable them to serve the needs of low and modest means clients and, as such, exacerbates access to justice and justice gap concerns. A recent Illinois Task Force report observed that the “law school debt crisis is having a serious and negative impact on the quality and availability of legal services that the legal profession provides.”<sup>40</sup> Moreover, the report observed that “significant student debt makes it difficult to obtain a loan” – financing that new attorneys seeking to open a solo practice may require.<sup>41</sup> Another recent report similarly concluded:

[T]he burden of law school debt can distort the employment choices of young attorneys. Small firms, particularly those in rural areas face greater difficulty hiring and retaining competent attorneys. Fewer lawyers are able to sustain a career working in low-paying public interest jobs.<sup>42</sup>

While recent changes in federal law have created law school debt relief programs that base loan repayment amounts on income levels and also seek to alleviate the loan repayment burden for lawyers who work in the legal services or public interest arena, some of these programs are not available to lawyers who opt to work as community lawyers and focus their practice on low or modest means clients. Nor is there equally advantageous debt forgiveness or support for lawyers who seek to practice as solo practitioners or as part of an incubator model. One relief program discharges student loan debt made or guaranteed against default by the U.S. government after 20 years, but the program only provides relief for certain types of loans—not private student loans.

## **b. Public Protection Concerns**

The burden of law school debt can also trigger public protection concerns, an issue at the heart of the Bar’s mission.

Lawyers have the dubious distinction of having the highest student loan default rates among graduate students – with a lifetime cumulative default rate estimated at between 15 and 20 percent.<sup>43</sup> Some have expressed concerns that these defaults, and the fiscal pressures facing young lawyers, can create pressure to engage in risky professional behavior, especially for young lawyers.

As a recent ABA Young Lawyers Division Report (the “ABA YLD Report”) observed, “[l]awyers burdened by debt face greater pressures and temptations to violate ethics

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<sup>40</sup> See *Illinois Report*, *supra* note 6.

<sup>41</sup> See *Illinois Report*, *supra* note 6, at 21.

<sup>42</sup> See *ABA YLD Report*, *supra* note 3, at 3.

<sup>43</sup> See *New York Report*, *supra* note 8, at 8.

rules.”<sup>44</sup> Similar concerns regarding the impact of law school debt on the quality of legal services were articulated by the Illinois State Bar Task Force Report: “attorneys with heavy debt loads may be more likely to commit ethics violations. The greatest pressures are on solo practitioners, who may take work beyond their competency, face financial pressures to prolong litigation, or terminate a representation inappropriately if a client has difficulty paying.”<sup>45</sup>

### **c. Diversity of the Legal Profession**

Finally, the issue of student debt necessarily impacts our community through the adverse impact these financial concerns can have on the diversity of our law schools, and in turn the diversity within our profession. As aptly noted in the ABA YLD Report:

[T]he high cost of a legal education creates additional barriers to entry for Blacks and Hispanics, who generally receive less support from their families to attend law school. The rapid rise in law school tuition is therefore one of the factors holding the legal profession back from embodying the full spectrum of diverse backgrounds in America.<sup>46</sup>

For all of these reasons, the time is ripe to bring attention to the ever-increasing law school debt, examine the role that the State Bar can play in addressing these concerns, and look for ways to enhance information gathering and engagement by the Bar moving forward. Indeed, by putting a spotlight on this issue and seeking solutions that can alleviate existing concerns, our State Bar will be joining a mounting focus on this issue at a national level, as well as in other states. Our voice can help guide the thinking and solutions that are being crafted across the nation and ensure that the valuable perspectives -- and concerns -- of our state are part of this important dialogue. Undoubtedly, these actions will benefit not simply our newest generation of lawyers, but our entire community.

## **B. TESTIMONY PRESENTED TO, AND INFORMATION ACQUIRED BY, THE TASK FORCE**

### **1. The Task Force’s Information Gathering**

#### **a. Witnesses Interviewed and Materials Reviewed**

The Task Force interviewed a diverse group of state and national experts, and reviewed and analyzed numerous reports, articles, statutes, and proposed legislation related to law school debt and access to justice.

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<sup>44</sup> See *ABA YLD Report*, *supra* note 3, at 3.

<sup>45</sup> See *Illinois Report*, *supra* note 6, at 2.

<sup>46</sup> See *ABA YLD Report*, *supra* note 3, at 3.

In addition to the witnesses who testified over the course of two Task Force hearings,<sup>47</sup> the individuals interviewed included: Barry Currier, ABA Managing Director of Accreditation & Legal Education; Justice Ann Jorgensen, Co-Chair Illinois State Bar Association Special Committee on the Impact of Law School Debt on the Delivery of Legal Services; Kathleen Smith, Senior Vice President of Access Group; Neil Thapar and Janelle Orsi, Sustainable Economies Law Center; and Daniel Thies, ABA Young Lawyers Division. (A list of the materials reviewed and analyzed by the Task Force is attached hereto as Appendix \_\_\_, Law School Debt Background & Research Materials.)

## **b. CYLA Information Gathering**

The California Young Lawyers Association (CYLA) is the nation's largest association of young lawyers, comprised of over 40,000 members who have either been in practice for five years or less or are 36 years old or younger. The Civil Justice Strategies Task Force invited CYLA to present testimony and information gathered from its members about the effects of crippling law school debt on California's newest generation of lawyers. CYLA testified that the issue of law school debt, including whether young lawyers are being prevented from entering public service or performing pro bono work as a result of their indebtedness burden, is of great concern to its members.

CYLA performed a student debt survey, collecting a myriad of information from its 20 member Board, which is comprised of young lawyers from all over the State. The survey contained questions regarding whether the attorney graduated with law school debt and whether the individual presently had debt; the amount of that debt; whether the attorney received governmental assistance, or credit/loan forgiveness from his or her employer; whether debt prevented the attorney from a career in public interest law; whether the attorney actively engages in pro bono work; and any suggestions as to how the State Bar could assist future law school graduates. The results of this survey were telling. Among those surveyed, the average student loan debt was \$100,000. Only one attorney received governmental assistance (through the GI bill) and none of those surveyed had received credit/loan forgiveness from an employer. A staggering 42% of those surveyed confirmed that their law school debt prevented them from embarking on a career in public interest law.

At the Task Force's August hearing, CYLA representatives testified and recounted the perspectives of young lawyers they had heard from as part of their research. These statements underscore the impact debt has on career choices.

*I wanted to be a public defender when I went to law school and completed several externships in government legal offices. I also did a lot of course work in juvenile law issues during law school, and would've considered the right legal aid job in that area of law. It's simply impractical for me to work in the public interest/service sector with the amount of debt I have.*

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<sup>47</sup> See Appendix B: Panelists & Witnesses at the Hearings on Civil Justice Strategies: June 18, 2014 hearing and August 26, 2014 hearing.

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*I can barely afford my loan payments working at a medium sized firm that pays well. I would love to consider doing something in the public interest sector but my loans have prevented me from even considering this as an option.*

### **c. State Bar Informal Survey**

The State Bar similarly engaged in a process of polling its members. An informal multiple-choice poll on the topic of student debt was circulated as part of the California Bar Journal electronic newsletter on August 1, 2014. The poll asked readers: “What level of debt did you have when you finished law school?” Of the 702 responses recorded online by August 11<sup>th</sup>, 16.95% chose the category “Less than \$25,000”; 9.26% chose the category “\$25,000 to \$50,000”; 19.37% chose the category “\$50,000 to \$100,000”; 38.60% chose the category “More than \$100,000”; and 15.81% chose the category “None.” (Poll percentages changed slightly as more audience members weighed in during subsequent days.) Admittedly this poll, with self-selecting participation, was unscientific; it nonetheless provided another item of information that the Task Force was able to consider.

## **2. Common themes from our August Hearing**

Certain themes emerged during testimony the Task Force heard at its hearing on August 26, 2014. While some of these accounts were anecdotal, the voices we gathered together included leading experts from around the nation. Moreover, the messages we heard from these individuals were consistent with findings made by other Task Forces that have studied this issue in different parts of the country (as discussed herein). The themes that arose during the testimony are summarized below.

### **a. Law school cost and the student debt problem have escalated in recent years and are a serious concern**

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“We're kind of typical for a state school. . . . The average amount that a law student will pay in one year is over \$70,000 and if they were to borrow all of that, the cost is \$213,000 over a three-year period. So this does have a burdensome effect on students and it does cause them to give thought as to whether or not they want to incur the cost that is required in order to join the profession.”

*8/26/14 hearing transcript, p. 36-38.*



Travis Thompson, President of the Business Law Association at Golden Gate University School of Law:

“I wouldn't be telling the truth if I didn't say I'm pretty scared right now.”

*8/26/14 hearing transcript, p. 89.*

Nathaniel Lucey, CYLA Special Advisor and former Board Member:

“[A]s you have this increase in debt over ten years, over a 50 percent increase in debt, wages for first-year attorneys have basically stagnated.”

*8/26/14 hearing transcript, p. 75.*

**b. These issues have the potential to impact career choices**

Nathaniel Lucey, CYLA Special Advisor and former Board Member:

“[T]he increased cost of law school is making public sector and public interest work not feasible for the average graduate.”

*8/26/14 hearing transcript, p. 76.*

Travis Thompson, President of the Business Law Association at Golden Gate University School of Law:

“I'm not looking seriously into the public interest sector or any type [of] government employment, simply just running the numbers, if you will; I wouldn't be able to afford it. I've centered my search on any type of corporate tax position that may be available in the local area.”

*8/26/14 hearing transcript, p. 89-90.*

Shavonte Keaton, President of the Black Law Students Association at Golden Gate University School of Law:

“[M]y dilemma throughout law school is balancing whether or not I wanted to go into public interest after law school, knowing that I'm going to come out of law school with \$200,000 in debt. . . . My whole dilemma through law school has been whether I'm going to still pursue a public interest career.”

*8/26/14 hearing transcript, p. 92.*

**c. Navigating and managing student debt is intensely complicated**

Heather Jarvis, Student Loan Expert:

“[T]he programs are so complicated, so convoluted, the system is difficult

to navigate that I think the programs are far less useful and effective than they might be, but they do exist.”  
*8/26/14 hearing transcript, p. 12.*

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“The portfolio can be quite complex and students often are not equipped to really understand the complexity of it.”  
*8/26/14 hearing transcript, p. 41.*

“So I think you're beginning to see the complexity of the loan repayment – of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment how confusing this could be.”  
*8/26/14 hearing transcript, p. 45.*

Emily Aldrich, CYLA Chair:

“We're a savvy population. We're going into a very savvy career and yet this – they are very complicated, these programs, and it's very hard to kind of understand what you're getting into and then it goes to a loan provider and you're getting information from – mine is Great Lakes – and you don't know what's going on. I think education is key for new and young lawyers.”  
*8/26/14 hearing transcript, p. 84.*

**d. Information and assistance to law school students or young lawyers isn't always readily available**

Heather Jarvis, Student Loan Expert:

“In my view, the objective assistance and information for student loan borrowers is completely inadequate. . . . I think schools are less focused on providing support for their graduates when it comes to selecting repayment options than they are in providing the financial aid to begin with. . . . It needs to be simplified considerably. . . . I think that schools can and should invest more in providing the resources that would be necessary to give more personalized advice to their graduates.”  
*8/26/14 hearing transcript, p. 18-19.*

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“I think you're beginning to see the complexity of the loan repayment -- of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment how confusing this could be. Where do they even find the information that they need to determine what their interest rate is and what it has been over time and if they have

undergraduate debt and graduate debt, it is very complex. . . . You know, we want to help them. This is our passion. We've all been students. We want to help students and we want them to understand this and we are in a unique position as administrators to understand the mechanics of all this and how it works and be able to explain it to students, but it adds a burden on us to do this, so therein lies the catch for us.”

*8/26/14 hearing transcript, p. 45.*

“So my point in saying all of this is that there are nuances that can work against a student if you don't know that they're there....

This goes back to the counseling and you've asked about how important the counseling is.”

*8/26/14 hearing transcript, p. 49.*

Professor Eleanor Lumsden, Associate Professor of Law at Golden Gate University:

“There is mandatory entrance and exit counseling, but I will echo what everyone else has said, there is not enough counseling. There's not enough counseling, but, again, we're strapped.”

*8/26/14 hearing transcript, p. 61-62.*

**e. We need to do more to develop the narrative, put a spotlight on this issue, and gather key data**

Chris Chapman, President and Chief Executive Officer of Access Group:

“I think the first thing that needs to be done is you need to develop a narrative, a narrative that states the case for the activities that you wish to achieve. Nobody argues about access to justice. . . . You have to have the narrative. I believe the narrative is there. You just have to make it, both from a qualitative standpoint and a quantitative standpoint.”

*8/26/14 hearing transcript, p. 34.*

**f. Existing loan forgiveness and repayment programs aren't fully adequate**

Heather Jarvis, Student Loan Expert:

“[S]tudent loan borrowers [who have their loans forgiven] have the possibility of significant tax bills at the end of their repayment period.”

*8/26/14 hearing transcript, p. 11.*

“Public service loan forgiveness is available for those who work full time for pay in government positions at all levels of government, state, local, federal, tribal governments and it's available for people who work in 501(c)

(3) nonprofit organizations, plus a few narrowly defined organizations, but all of them being nonprofit, so there is no for profit structure in which someone would qualify for public service loan forgiveness.”  
*8/26/14 hearing transcript, p. 16.*

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“[S]mall solo practitioners, family law, people that are not a 501(c) (3) or a government agency, but have low income are not provided any relief in the Public Service Loan Forgiveness Program. . . Somebody like this does not reap any benefits from the federal repayment assistance. And then there are some states that have the Public Interest Loan Forgiveness Programs, but California does not.”  
*8/26/14 hearing transcript, p. 51.*

Professor Eleanor Lumsden, Associate Professor of Law at Golden Gate University:

“[V]ery few loan repayment assistance programs extend beyond work that consists of legal services work, public interest or government service.”  
*8/26/14 hearing transcript, p. 60.*

### **C. RECOMMENDATIONS**

One of the biggest challenges for the Task Force was to identify how the State Bar can impact what is an admittedly complex and far reaching problem. The recommendations below provide our best thinking in regard to proposed recommendations, but we also believe that further consideration as to the Bar’s most effective role in this area is appropriate. To that end, we encourage the Bar to view this work as the *start* rather than the *end* of a process. We hope that the Bar’s leadership will create a vehicle for implementation of these recommendations as well as ongoing consideration of ways to address the multitude of concerns associated with the crisis of overwhelming student loan debt.

#### **1. The Bar should serve as a clearinghouse of information on student debt management and repayment programs**

The Task Force heard in no uncertain terms about the complexities of student debt management as well as the knowledge gaps among law school students and young lawyers in regard to this issue. While some law schools are proactive in their efforts to educate students about student debt, there is no uniform set of standards in regard to either law school counseling or law school loan repayment programs.

The Bar can help fill this void by working with state and national experts and organizations (including Access Group) to improve the level of understanding among law students and new lawyers in regard to these complex issues. The Bar can also

serve as a clearinghouse of available information. While the Bar's website has some useful information for "future lawyers" (see <http://admissions.calbar.ca.gov/>) – including a list of California law schools and requirements for admission to practice law – there is no information on key questions to ask in regard to student debt, financial literacy, and repayment programs. Nor are there links to other resources on these topics, or information on Bar Foundation grants and resources that can help law students or struggling graduates pay for or help defray the costs of tuition and/or bar review courses.

We recommend that the Bar reach out to others developing useful resources (including Access Group), provide a centralized place on the Bar website to enable lawyers to find and access key information and statistics (including material gathered during the Task Force's tenure), offer a vehicle for prospective law students to assess differences among California law schools in regard to loan forgiveness programs, and create a platform for information sharing on an ongoing basis. This enhanced compilation of information could also include financial literacy worksheets for prospective or current law school students that can assist them in assessing the extent of debt they might reasonably consider taking on.

**2. Working through CYLA, the Bar should develop mechanisms and new approaches to assist young lawyers to better understand and proactively address the implications of their student debt obligations**

CYLA was an enthusiastic contributor to the work of the Task Force and has expressed its interest in remaining engaged in next steps. There is an invaluable ongoing contribution that CYLA can make by prioritizing this issue and developing a plan over the next two years to create educational programming, fact sheets, counseling and peer advisors, and other mechanisms for enhancing the understanding of new lawyers in regard to management of their student debt. CYLA should also consider ways to reach out to and work with undergraduate pre-law advisors, law schools and local bar associations to promote collaborative efforts that would advance enhanced information for, and education of, prospective and current law students about the importance of appropriate, informed and responsible borrowing

**3. The Bar should continue to put a spotlight on the issue of law school debt, promote an enhanced understanding of the link between student debt and the broader community's access to justice and public safety concerns, and assist others working to study, quantify and better define the implications of student loan indebtedness**

The work of this Task Force, and the hearing on law student debt held in August 2014, marked the first visible engagement by the State Bar in educating the community about the broader public concerns that are implicated when lawyers enter the legal profession burdened with over \$100,000 in student debt. It is our

hope that this hearing will not be the only opportunity for this issue to receive public attention and discourse. In particular, there are a host of ways that Bar leadership and staff can continue to promote a deeper understanding of this issue and its import – through articles and speaking opportunities, development of educational materials, adding pertinent information to the Bar website, and other Bar outreach techniques. Simply helping to promote and define a narrative that underscores the broader public concerns triggered by mounting law school debt are valuable efforts in an area that for too long has been viewed as a self-interested “lawyer only” concern.

There is also an effort afoot nationally by groups including the ABA and Access Group to study and gather data in regard to the broader implications of law student debt. The State Bar should consider ways to assist these organizations and bring California’s voice into the forefront as this fact finding process continues. The Bar, in turn, can benefit from the perspectives and new ideas generated during the ongoing national consideration of these issues.

**4. The Bar should work through its discipline arm and endeavor to assess whether student debt is precipitating or contributing to lawyer misconduct**

The potential for crushing student debt to result in defaults, financial problems, and/or ethical violations is an appropriate concern for the Bar and the public we are charged with protecting. Yet not enough is known in regard to the actual impact of student debt on discipline violations and attorney misconduct. Having a deeper understanding of this information, and establishing preventative measures and other responses that might address these concerns, would further the Bar’s core mission of public protection and enable the Bar to put in place efforts that might help avoid attorney misconduct before it occurs.

With these objectives in mind, the Bar should encourage its discipline arms – the Regulation and Discipline Committee as well as the Office of Chief Trial Counsel – to explore ways to assess whether discipline actions related to these concerns are arising and, if so, what preventative strategies might be in order.<sup>48</sup>

**5. The Bar should use both its law school regulatory power as well as its established relationships with law school leaders to encourage enhanced counseling, strategies and disclosures regarding student debt**

The Bar has a strong relationship with the many law schools in our state – both through its regulatory role and as a result of its ongoing work with law schools on a host of issues and reforms. While some law schools have instituted impressive individualized loan debt counseling for students, there is no established set of

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<sup>48</sup> Possible preventative strategies might include financial literacy support and training for those lawyers who are facing financial and economic stresses. Similar strategies that seek to address the root cause of disciplinary problems and thereby prevent future misconduct have been employed by the Lawyer Referral Assistance Program in the context of lawyers who find themselves in the disciplinary system due to substance abuse issues or other external pressures.

standards or best practices.

Working with key law school leaders, the Bar should endeavor to create and encourage schools to implement a set of best practices that would include:

- a. Individualized counseling for students, prospective students and recent graduates at all stages – including before, during, as they near completion of, and immediately upon graduation from, their law school tenure – on topics such as calculating total law school costs, loan consolidation and refinancing strategies, true (and hidden) loan costs, and other nuances of managing their debt;
- b. Financial literacy counseling and guidance as part of law school admissions and orientation processes;
- c. The creation of a loan “ombudsman” to serve as a point of contact for law students as well as alumni on this issue;
- d. Expansion of LRAP programs beyond public interest and public service attorneys to include attorneys in small or solo practices focused on addressing the needs of low and modest means clients; and
- e. Public disclosure and tracking requirements that help ensure complete and accurate information regarding (i) law school costs, (ii) student debt statistics and alumni default rates, and (iii) accurate post-graduation law-related employment figures and prospects.

## **6. The State Bar should consider ways to add its voice to the national dialogue seeking to develop new and enhanced loan forgiveness and repayment approaches**

There are a host of national efforts to protect existing favorable student loan and income based repayment programs and also to promote new approaches in this arena. At the same time, the ABA is studying how to best address the increased cost of law school as well as mounting student debt. The Bar’s voice and perspectives can be an invaluable part of this national dialogue.

Issues where the Bar may wish to consider engagement include:

- Expanding favorable public service loan forgiveness and repayment programs beyond public interest and legal services attorneys to include community and solo practitioners who are focused on representation of low and modest means clients;
- Eliminating the higher interest rates associated with graduate student loans (the so-called graduate student loan “penalty”);
- Allowing for the repayment of loans with before tax monies;
- Addressing “hidden” loan costs;
- Eliminating the accrual of interest during law school;

- Creating an interest free loan deferral period after graduation so lawyer have a longer period to get on their feet, pass the bar and embark on their careers; and
- Basing federal loan availability on the law school's employment track record or other benchmarks that reflect the employability of the school's graduates.<sup>49</sup>

In addition to these national policy discussions, the Bar should explore with the ABA possible ways to help provide financial literacy and student debt information to prospective law school students as part of the law school admissions process. The Bar should also encourage the CYLA to work with the national YLD to create a “future lawyers” clearinghouse with key student debt information and links to state bar websites that contain useful student debt, financial literacy and debt planning information.

## **7. The State Bar should help encourage new and innovative models that seek to address law school cost concerns**

Rising law school costs are a significant concern in our state as well as nationally. The Task Force does not profess to have the answers to resolve these concerns. We did, however, hear about models that seek to consolidate the total number of years required to achieve a law school degree. Innovative models such as the 3+3 program – whereby colleges and law schools partner to allow undergraduates to receive credit toward law school graduation and thereby achieve both a Bachelors and Law degree in 6 (rather than the usual 7) years – are an intriguing vehicle for reducing law school costs. Also of interest to the Task Force is the New York “Legal Scholars” program whereby students are able to take the Bar at the end of their first semester of their 3L year and spend their final half year getting practical legal services job experience. We believe that these are models that should be closely studied by the Bar and its law school regulatory arm. The Bar should help encourage innovative thinking in this area and do what it can to highlight, encourage and, when appropriate, consider vehicles that might eliminate barriers to the development of new models.

## **8. The Board of Trustees should create a group to implement these recommendations**

As noted above, there is a need for ongoing strategic thinking in regard to how the Bar – through its staff and leaders – can best impact change in regard to the concerning issue of student debt. With national discussions ensuing, the Bar can also be instrumental in tapping national experts and helping guide national perspectives on this vitally important topic. These national efforts may also identify new thinking and innovative approaches that would suggest additional strategies that the Bar might want to explore. The recommendations set forth above would benefit from the direction and oversight of a committed group of individuals who

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<sup>49</sup> See ABA YLD Report, *supra* note 3, at 1.



could work with Bar staff, CYLA and law schools in charting and implementing next steps.

This issue is one of concern not simply to our profession, but more broadly to our community as a whole. While the Task Force was able to make great strides in its short tenure and identified some concrete areas for effective engagement by the Bar, more work remains to be done to have a meaningful and lasting impact on this landscape.

