

“Working With Your Hands Tied Behind Your Back”
Non-Lawyer Perspectives on Legal Empowerment

NCAJ National Center for
Access to Justice

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About This Report

The National Center for Access to Justice (www.ncaj.org) works to advance the principle that everyone should have a meaningful opportunity to be heard, secure their rights and obtain the law's protection. We use research, data and analysis to expose how the justice system fails to live up to that ideal and, all too often, functions as a source of oppression. We work to identify and promote practices that can improve access to justice, and we measure existing laws and policies against those goals. The NCAJ makes its home at Fordham Law where it helps to guide the school's Access to Justice Initiative.

This report was made possible by funding from the Open Society Foundations. NCAJ believes that a key part of the access to justice agenda is finding ways to empower people other than attorneys to use the law to provide legal services, to organize and to fight for change. This report is a contribution to the intense policy debates that have sprung up around that idea in recent years—and a call to make those discussions far more inclusive and wide-ranging than they have generally been.

Summary

The law does not belong to lawyers. It belongs to everyone in this country who needs the law's protection, who wants to use the law to improve their lives, or who finds themselves in court against their will. Yet conversations about who should be allowed to use the law tend to have only lawyers in the room. So do state-led efforts to imagine new ways of extending legal help to more people. The result is a failure of perspective and imagination, against a crisis of unmet legal need that is only growing worse.

Every year, millions of Americans who need help with their legal problems find out that there is no such help on offer. Some are left to go it alone in court, where they may stand little chance against a better-equipped adversary. Some lose their homes, their savings and their children in cases they might have won with the right kind of help. Others avoid the legal system altogether, in situations where it could help vindicate their rights or win reparation for abuse.

Lawyers are expensive, and in many communities there simply aren't enough of them. There is also no economical way for private attorneys to take on many kinds of low-value legal matters. Legal aid provides excellent representation to many but is dwarfed by the scale of unmet need—and most Americans do not qualify for those services at all. There is a vast universe of people who need help but will never sit down with a lawyer. Many do not understand how much of a difference legal help could make in their lives.

Many of these people end up being casualties of America's broken legal services market. Every state gives lawyers a sweeping monopoly over the provision of legal services, including the kind of basic legal advice and support many self-represented litigants crave. Policymakers see this as a way to protect consumers from incompetence and exploitation. In reality, it serves some litigants well while failing everyone else completely.

Faced with the vast scale of unmet legal need, several US states are finally moving to embrace alternative models of legal services delivery. They are leading the way forward with real, concrete steps to improve access to legal services. Some are contemplating new licenses that will allow accredited non-lawyers to provide a limited range of legal services, and a few states have taken this step already. Utah has taken the boldest step. It has set up a program to authorize carefully monitored experiments with different models of legal services delivery—experiments that will also shed light on the potential, larger impact of loosening the rules on non-lawyer practice. California is considering a similar approach.

Unfortunately, most reform efforts have suffered from a defect that sharply limits their potential. They are almost entirely dominated by lawyers. Lawyers too often assume—implausibly, but with conviction—that they alone are well-equipped to imagine alternatives to themselves. Lawyers express trepidation about allowing others to work with the law, but they seldom bother to ask those “others” what they think they should be allowed to do with it and why.

In state after state, debates around legal services reform have been devoid of non-lawyer perspectives. Reform efforts have unfolded mostly at the state level, led by either the bar association or the judiciary. Some have tried to build in a diversity of perspective—California’s paraprofessional working group, for example, includes several non-lawyer members. Many others, however, have excluded non-lawyers from their deliberations almost reflexively, and most have garnered little public input from beyond the bar.

Predictably and unfortunately, this has led to a narrow and inaccurate understanding of the need for change, and to a set of proposed solutions that lack ambition and creativity. Lawyers have tended to work towards the creation of entirely new classes of certified professionals, similar to themselves. Those models are part of the solution, and where they have been adopted they have worked well. But America’s access to justice crisis is a multi-layered challenge that needs many solutions and not just one.

Lawyers know the law better than others. However, they have a limited perspective on the reasons people do not seek legal help, and on the kind of help people who never speak to a lawyer actually want. Nor are they likely to have a clear perspective on the kinds of legal help actors outside of the legal profession are willing and able to give. Lawyers do not generally ask whether and to what degree the existing rules make it harder for vulnerable people to obtain the help they need. The voices of consumers—and would-be consumers—of legal services have not been properly included in any serious discussions around unmet legal needs.

Fortunately, there is an entire universe of people who encounter unmet legal needs every day and have keen perspectives on their urgency, as well as the best ways to confront them. They are not lawyers. They are librarians, legal document assistants, social workers, community organizers, tenant advocates, and others. Those professionals, community leaders and activists often have a sharp perspective on the kind of change states should embrace to empower their residents to get the right kind of help. It’s long past time for lawyers to embrace the need to include these perspectives, and accept the limits of their own.

Over the course of the past year, the National Center for Access to Justice carried out interviews with more than 60 people who have a sharp, firsthand perspective on America’s access to justice crisis and the kind of change they think is needed.¹ None of them are lawyers. Most work directly, every day, with people who suffer for want of legal help.

Our interviewees brought keen insights to bear on many key issues. Some emphasized the widespread need for limited legal advice. Others focused on the legal needs of middle-class consumers—often neglected thanks to an assumption that unmet need is “only” a problem of the poor. Some wanted to professionalize new, low-cost models of service delivery. Others wanted more space for activists to use the law to fight for structural change—and not just offer

¹ NCAJ carried out 45 in-depth, one-on-one interviews, and interviewed another 17 stakeholders in group settings. All interviews were carried out by phone or via Zoom.

it as a “service.” Many who urged an expansion of legal empowerment also argued for strong consumer protections—an imperative many lawyers tend to assume they are alone in understanding.

This report puts forward some of the most vital, inspiring and provocative perspectives that emerged from those interviews. Our interviewees do not all agree with one another. Their perspectives do not add up to any one clear vision. Nor do they speak for the entirety of their fields or professions. What their insights do illustrate is just how much sharp, original and useful perspective lawyers are missing when they huddle around a table to discuss these issues by themselves.

This report aims to help show why every state contemplating legal services reform should include a strong range of voices from outside the legal profession. This is how states can gain an accurate picture of the problem, an honest understanding of the urgent need for change, and a chance at developing the best solutions. Lawyers have a vital role to play, but they cannot chart the way forward on their own and should not presume to try.

I. Re-regulating the “practice of law”

In every US state, lawyers have a near-monopoly on the practice of law. That monopoly is drawn in remarkably broad terms. The “practice of law” is a vague and sprawling concept that defies the sort of precise definition lawyers—and the law—usually favor. Representing someone in court is, of course, the practice of law. But so is offering any kind of advice about how someone should handle a legal problem, or how the law might apply to any real-life situation—even if that advice is given for free.

No one really knows where the “practice of law” begins and where it ends. With refreshing honesty, the New York State Bar Association’s guide for new attorneys notes that there is “no single place to turn in New York for a definition of the practice of law and what may constitute the unauthorized practice of law in New York State.”² The same lack of clarity exists in other states. California holds that the practice of law “includes, but is not limited to, the following activities: (1) performing services in court cases/litigation; (2) giving legal advice and counsel; and (3) preparing legal instruments and contracts that secure legal rights - even if the matters involved do not have anything to do with lawsuits or the courts.”³

Every state prohibits the “unauthorized practice of law,” or UPL. In some states, it can result in a sentence of incarceration.⁴ States and the federal government have carved out some narrow exceptions— areas where non-JDs are allowed to work with the law in ways that would otherwise be prohibited. Non-attorneys can become certified to assist people with immigration

² New York State Bar Association, *The Practice of Law in New York State: An Introduction for Newly-Admitted Attorneys*, p. 33, <https://nysba.org/app/uploads/2020/03/The-Practice-of-Law-in-New-York-State.pdf>.

³ *People v. Merchants Protective Corp.* (7922) 789 Cal. 531, 535.

⁴ See, e.g., California Business and Professions Code 6126(a).

law matters, for instance, and can assist people in various administrative settings.⁵ The Supreme Court has established that non-attorney “jailhouse lawyers” have the right to help guide fellow inmates through their legal issues if the state does not provide alternative legal assistance.⁶ The necessity for these exceptions illustrates how broad the underlying prohibition is—people who are not lawyers should generally not use their knowledge of the law to help others.

The lawyers’ monopoly is justified primarily as a way to protect consumers from harm—to shield them from incompetence and exploitation. The rules are meant to ensure that every consumer of legal services is getting them from a competent and ethical lawyer. Reasonable minds may differ on the inherent value of this approach. Regardless, it has contributed to a yawning chasm between the public’s need for legal help, and the amount of help actually on offer.

Every year, tens of millions of people navigate legal problems alone, without or any sort of legal advice.⁷ Many suffer for it. Some lose cases by default because they ignore the system’s demands for their participation. Others are steamrolled in court by more powerful legal adversaries who have lawyers on their side. Many do not use the law in situations where it could help vindicate their rights. One leading study found that only about a fifth of people surveyed had sought any kind of help with recent civil legal problems. Many did not even realize that their problems were legal in nature, or that the law might be of help to them.⁸

It is palpably obvious that lawyers alone can never hope to remedy all of America’s unmet legal need, no matter how committed the bar might be to improving access to justice. Legal aid programs provide excellent legal help, but are a drop in the bucket next to the scale of unmet need.⁹ Middle income people aren’t even eligible for legal aid—but that doesn’t mean they can afford to hire a lawyer.

⁵ For example, qualified non-attorneys can become Certified Representatives and assist people in immigration matters, pursuant to 8 C.F.R. § 1292.12. Similarly, the Social Security Administration allows people to appoint non-lawyers as representatives in certain administrative matters.

⁶ *Johnson v. Avery*, 393 U.S. 483 (1969).

⁷ The Self-Represented Litigants Network estimates that 3 out of 5 people in civil cases go to court without a lawyer—some 30 million people. See <https://www.srln.org/>. See also State Bar of California, *California Justice Gap Study*, 2019, <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-Executive-Summary.pdf>.

⁸ Rebecca Sandefur, “Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study,” August 8, 2014, https://www.abajournal.com/files/sandefur_accessing_justice_in_the_contemporary_usa_aug2014.pdf.

⁹ A 2017 study by the Legal Services Corporation estimated that 86% of the legal problems reported by low-income Americans received inadequate or no legal help—and low-income Americans who bring legal problems to LSC-funded legal aid organizations would receive limited or no assistance in more than half of all cases due to lack of resources. Legal Services Corporation, *Justice Gap Report: Measuring the Civil Legal Needs of Low-Income Americans*, 2017, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

Volunteerism isn't the answer either. Gillian Hadfield, a scholar and advocate of and advocate for legal regulatory reform, has estimated that it would cost roughly \$46 billion per year to provide just one hour of legal help to every American household that is currently facing legal problems. Alternatively, Hadfield calculated, every licensed US attorney would have to devote some 180 hours to pro bono service every year.¹⁰

Civil legal aid organizations perform an essential role, and the civil right to counsel movement has gained traction in recent years. But Americans should not have to rely entirely on free legal services for help, even if it were more widely available. Washington Limited Licensed Legal Technician Sarah Bove told NCAJ that, "What really drives me nuts, is this idea that we can gift legal services—gift access to justice— and that is some kind of solution. Because the people who decide who receives that gift are the ones in control, and they can change their mind at any time. That makes us very unsafe."¹¹

In the face of these realities, a growing chorus of advocates argues that people other than lawyers should be allowed use the law to help others. Rohan Pavuluri, for example, leads a pioneering non-profit that helps low-income people file for bankruptcy protection free of charge. His organization, Upsolve, tackles the perverse reality that many people need help to access bankruptcy protections but cannot afford to hire an attorney— because they are bankrupt.¹² Pavuluri argues that the lawyers' monopoly is untenable:

Opponents [of reform]...object on the grounds that allowing a new class of professionals to help low-income families access the justice system will create two tiers of justice, one for people who can afford a lawyer and one for those who can't. This view fails to appreciate that it's simply impossible to have a lawyer for every single person in America who needs one.¹³

Slowly but steadily, support for change has been building in many US states.

¹⁰ See Gillian Hadfield, "Why Legal Aid and Pro Bono Can Never Solve the Access to Justice Problem," December 11, 2016. See also Zach DeMeola, "Pro Bono Work Should be Celebrated and Encouraged but Much, Much More is Needed," IAALS Blog, October 18, 2019, <https://iaals.du.edu/blog/pro-bono-work-should-be-encouraged-and-celebrated-much-much-more-needed>.

¹¹ NCAJ Zoom interview with Sarah Bove, Tacoma, WA, December 3, 2020.

¹² See <https://www.upsolve.org>.

¹³ Rohan Pavuluri, "Unauthorized Practice of Law' Rules Promote Racial Injustice," *Law 360*, June 7, 2020, <https://www.law360.com/articles/1280193>.

States at the Forefront of Change

Several states have taken concrete steps to create new models of legal services delivery.¹⁴ Five stand out from the crowd:

Utah has moved faster and farther than any other state. The state has created a new class of credentialed, limited licensed legal services providers called Licensed Paralegal Practitioners (LLPs). LLPs are permitted to offer legal services in family law, eviction and consumer credit matters.¹⁵ Even more ambitious, it has set up a “regulatory sandbox” that will authorize vetted applicants to experiment with new models of legal services delivery not otherwise permissible under existing rules.¹⁶

California’s state bar has set up two working groups to consider possible reforms. One will likely recommend piloting a limited license practice model similar to Utah’s and Washington’s.¹⁷ Another is considering whether to recommend a “regulatory sandbox” approach akin to Utah’s pioneering effort.¹⁸ California’s size and importance mean that reforms there would have national resonance.

Arizona is in the process of standing up its own limited license practice model. The state’s Licensed Paraprofessionals will be able to practice in administrative law, family law, landlord-tenant and consumer credit cases—along with limited scope to practice in low-level criminal matters.¹⁹ It has also authorized an exciting pilot program that will allow trained, non-lawyer domestic violence advocates to provide legal help to women in need. That pilot program’s initial cadre of Licensed Legal Advocates began work in January 2021.²⁰

Minnesota authorized a pilot program of independent paralegal practice in 2020. Practitioners will be authorized to provide legal services in a carefully prescribed range of

¹⁴ In addition to the states outlined below, Illinois and New Mexico have taken initial steps towards considering reform. See Aebra Coe, “Where 5 States Stand on Nonlawyer Practice of Law Regs,” *Law 360*, February 5, 2021, <https://www.law360.com/access-to-justice/articles/1352126/where-5-states-stand-on-nonlawyer-practice-of-law-regs>.

¹⁵ See <https://www.utcourts.gov/legal/lpp/>.

¹⁶ See <https://sandbox.utcourts.gov/>.

¹⁷ See <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/California-Paraprofessional-Program-Working-Group>.

¹⁸ See Sam Skolnik, “California Bar Trustees Move Toward New Regulatory ‘Sandbox,’” *Bloomberg News*, May 14, 2020, <https://news.bloomberglaw.com/us-law-week/california-bar-trustees-move-toward-new-regulatory-sandbox>.

¹⁹ See Lyle Moran, “Arizona approves nonlawyer ownership, nonlawyer licensees in access-to-justice reforms,” *ABA Journal*, August 28, 2020, <https://www.abajournal.com/web/article/arizona-approves-alternative-business-structures-as-part-of-access-to-justice-reforms>.

²⁰ See University of Arizona, James E. Rogers College of Law, “New ‘Licensed Legal Advocates’ Program Aims to Close Justice Gap for Domestic Violence Survivors, Provide New Path for Legal Support, February 3, 2020, <https://law.arizona.edu/news/2020/02/new-licensed-legal-advocates-pilot-program>; Also, see below, Advocacy and Support.

landlord-tenant and family law matters. Though they must remain formally under attorney supervision, they can independently do a range of tasks, including in-court representation.²¹

Washington was an early pioneer, creating a class of Limited License Legal Technicians (LLLTs) who are authorized to engage in limited family law practice—an area of tremendous unmet need in many US states. The program has succeeded in delivering high quality services, but onerous credentialing requirements and political uncertainty kept enrollment low. In 2020, the state Supreme Court made the regrettable decision to sunset the program.²²

NCAJ has long supported the cause of reform—we have seen firsthand that progress is not easy.²³ Debates around the wisdom and ideal scope of change have been polarizing and tense. In many states, proposed reforms have met with stiff opposition within the bar. While some lawyers have been strong proponents and indeed the chief architects of change (and many legal scholars have also long urged reform²⁴), others have cast reforms as either reckless or as a threat to their own bottom line.

Many lawyers opposed to change appear convinced that non-JDs can never hope to use the law competently. In 2019, hundreds of California attorneys wrote public comments to oppose the idea of limited legal services work for trained and credentialed non-lawyers. NCAJ reviewed most of these. Several thoughtful interventions aside, the large majority were lazily dismissive of the idea of reform. “What’s next,” one attorney wondered, “are you going to have non-doctors performing surgery?”²⁵ That straw-man argument exemplifies what is wrong with many lawyers’ perspective on these issues—it combines an exaggerated faith in a lawyer’s own credentials, with an indefensible contempt for everyone else’s competence.

This is all partly a function of insular policy discussions that are bereft of non-lawyer perspectives. Because they are isolated from non-lawyer perspectives, lawyers have often failed to appreciate the limits of their own.

Lawyers have an excellent understanding of the justice system and of the importance of legal services. They have a much more attenuated perspective on the kind of help people who never interact with a lawyer actually want and need. Nor do they generally have a good perspective

²¹ See Lyle Moran, “Minnesota will launch legal paraprofessional pilot program,” *ABA Journal*, October 1, 2020, <https://www.abajournal.com/news/article/minnesota-to-launch-legal-paraprofessional-pilot-program>.

²² See Thomas Clarke and Rebecca Sandefur, Preliminary Evaluation of the Washington State Limited License Legal Technician Program, April 11, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949042.

²³ See New York City Bar, Committee on Professional Responsibility, *Narrowing the “Justice Gap”: Roles for Nonlawyer Practitioners*, June 2013, <https://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>; Richard Zorza and David Udell, “New Roles for Non-Lawyers to Increase Access to Justice,” *Fordham Urban Law Journal*, March 2016, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2545&context=ulj>.

²⁴ See, e.g., Rhode, Hadfield, Sandefur, Rigertas

²⁵ Chris Albin-Lackey, “California Should Embrace Non-Lawyer Providers,” *Law 360*, October 20, 2019, <https://www.law360.com/articles/1211183/california-should-embrace-nonlawyer-providers>.

on the kind of legal help non-lawyers who are already working with underserved people might be well-positioned to offer.

Luckily, lawyers don't have to grapple with all of these issues on their own—and they should stop trying to. There is a vast universe of non-lawyer professionals and activists who have keen insight into these questions. Centering those perspectives will yield better insight into the nature of communities' unmet need, and more pragmatic and creative thinking about the kind of reform we need and are capable of achieving.

II. Untapped Potential: Non-Lawyers and the Law

Over the last year, NCAJ has interviewed dozens of professionals and activists from all over the country. They include organizers, legal document preparers, librarians, social workers, paralegals and people from many other professions. This diverse group of people has just two things in common—none of them are lawyers, and all of them work directly with people who can't get the legal help they need. We sought them out because they have sharp and pragmatic perspectives on the kind of legal services the people they serve need most, the reasons they don't get that help—and the ways to bridge that gap.

There is no unified “non-lawyer perspective” that emerges from this kind of conversation. Some of NCAJ's interviewees are keenly focused on the delivery of legal services, while others want more space to use the law to effect systemic change. Some supported the creation of new non-lawyer roles accompanied by strict education and training requirements. Others articulated sweeping visions of a more “democratized” law that people are freer to use without penalty, no matter their training. Some clamored for the freedom to give the people they already work with straightforward legal advice with routine legal problems. Many of our interviewees had specific visions of how their own professions could address specific legal needs with the right kind of training and empowerment. Others felt strongly that the solutions lay elsewhere. A few thought the idea of letting any non-attorney use the law was simply too dangerous.

The following pages draw out some of the most striking and salient of these perspectives. We do this partly because the ideas our interviewees put forward deserve to be incorporated into the debates many states are having around practice of law reform. The larger point, though, is to illustrate the depth and range of perspective that is missing from those conversations when they are dominated by lawyers. Any conversation about the legal needs of people who lawyers never talk to, ought to have more non-lawyers at center stage.

Surveying the Needs of Homeless Veterans

The US Department of Veterans Affairs employs a network of social workers who assist veterans all over the country. There are some 37,000 homeless veterans around the US.²⁶ In order to better understand and respond to the needs of this particularly vulnerable population, the VA conducts an annual CHALLENGE survey that asks homeless veterans, service providers and other key stakeholders to rank the needs of homeless veterans in their communities.

Obtaining legal assistance is a priority for veterans. The CHALLENGE survey consistently reveals that about half of the top ten unmet needs experienced by homeless veterans relate to legal assistance with civil or criminal legal problems. These include child support issues, restoration of suspended drivers' licenses, outstanding warrants for unpaid fines and fees, eviction and foreclosure, and financial guardianship.²⁷

Legal assistance is often unavailable. The VA uses survey results to inform its efforts to connect veterans to assistance within their communities. In many parts of the country, however, these services simply don't exist. Katie Stewart, the VA's National Coordinator for Veterans Justice Outreach, recalled her time working as a VA social worker in rural North Carolina:

I had a list of legal aid providers, but it was very limited, sprinkled here and there. They primarily did stuff around eviction and domestic violence. People would come in and ask, and I'd give them this list, but I'd know it wasn't going to be that helpful to them. It wasn't going to address custody, or child support. The only area where I really felt like there was support for our community was eviction and domestic violence.²⁸

The VA has made efforts to try to address these needs. For example, it has worked closely with the Legal Services Corporation to try to get more legal help to veterans.²⁹ And many facilities host medical-legal partnerships that bring lawyers on site to help Veterans with legal issues—but demand often far outstrips supply.

Another concrete step the VA took in response to the dearth of legal services available to many homeless veterans, was to allow social workers to get training to become SOAR caseworkers.³⁰ SOAR (SSDI/SSI Outreach, Access and Recovery) is a program that looks to connect eligible people at risk of homelessness, with social security and disability benefits

²⁶ US Department of Housing and Urban Development, *2019 Annual Homelessness Report to Congress*, January 7, 2020, <https://www.hudexchange.info/resource/5948/2019-ahar-part-1-pit-estimates-of-homelessness-in-the-us/>.

²⁷ US Department of Veterans Affairs, Fact Sheet: Community Homelessness Assessment, Local Education and Networking Groups (CHALLENGE), February 2019, on file with NCAJ.

²⁸ NCAJ telephone interview with Katie Stewart, National Coordinator, Veterans Justice Outreach, Washington, DC, November 9, 2020.

²⁹ See <https://www.lsc.gov/about-lsc/veterans-task-force>.

³⁰ Ibid.

they are eligible to receive. SOAR workers are trained to help applicants through a process they might struggle to complete on their own.³¹

Legal Advice Where It's Needed Most

State-level debates around “practice of law” reform have tended to focus on proposals for new models of licensed, comprehensive legal service delivery. Many of the people NCAJ interviewed, however, saw value in reforms that would give people access to a more modest and discrete kind of help. In particular, many emphasized a vast, unmet need for basic legal advice among the populations they serve.

The legal advice people need is often straightforward, routine and relatively simple—but also entirely out of reach. Interviewees expressed frustration that advice was impossible to come by for people who had no realistic access to a lawyer. Some advocated that they and their colleagues be trained and authorized to offer legal advice. Others proposed different models. A few struggled to imagine solutions they were comfortable with, but railed against a status quo that makes it so hard for unrepresented people to get meaningful help.

One Legal Document Assistant (LDA) in California, described many of her clients this way:

My firsthand experience here is, people come to me when they are fed up and frustrated with the self-help services [offered to self-represented litigants by the court] because it will not provide any kind of legal advice, they are tight-lipped. People are blowing up, frustrated, I just attended this class and wasted hours, what do you *mean* you are still not accepting my documents!

She went on to lament the apparent absurdity of rules that prevented her from giving even the most basic legal advice. She asked rhetorically, “How is society benefitted by them not knowing that their landlord can’t just change the locks?”³²

Another LDA described the range of things she was not allowed to say this way: “It’s frustrating and it’s like working with your hands tied behind your back.”³³ That sentiment was echoed by many NCAJ interviewees, across a range of different non-lawyer professions.

In Utah, some 99% of alleged debtors go unrepresented in consumer debt cases, mirroring nationwide trends. Lawyers never encounter these litigants unless they are on the other side of the case, representing a creditor. NCAJ spoke with Ellen Billie, the director of a non-profit that offers financial counseling and debt management help in Utah. Her organization’s client base includes many unrepresented alleged debtors. She described a clamoring for basic legal advice that she and her non-attorney staff were not equipped or indeed even allowed to offer:

³¹ For more information on the SOAR program, see <https://www.samhsa.gov/homelessness-programs-resources/grant-programs-services/soar>.

³² NCAJ telephone interview with Legal Document Assistant, California, September 2020.

³³ NCAJ telephone interview with LDA, California, September 2020.

We have so, so many clients that are in the dark and honestly, my stance in leadership for several years now has been to very strictly and firmly tell my counselors, “do not give them legal advice,” because so many of our clients want it. That’s the first thing many of them ask for. We can’t tell them, “pay this bill but don’t pay that one,” but so many of them really, really want us to make that decision for them.³⁴

Billie said she saw potential in Utah’s “sandbox” reforms, which could allow trained non-lawyer staff to provide basic legal advice:

There is a lot of advice we could give as long as I had some security that it wouldn’t come back and shut us down as an organization...Sometimes we *know*, they need bankruptcy, they cannot repay the debt in any way and they have to file for bankruptcy. But we can’t say that. If we could just remove that red tape and say, “you should file for bankruptcy, here are some attorneys.” Conversely, sometimes a client is adamant that they want to file for bankruptcy but we know it’s a very poor decision for them, I’d like to tell them, *don’t do that*, you’re going to destroy your credit for seven years, a settlement would be a better option.

Billie’s fear of being “shut down” or otherwise sanctioned for providing unauthorized legal advice loomed large in the minds of many NCAJ interviewees.

Michael Buono, head of patron services at the bustling Brentwood Public Library in New York, said that he and his staff regularly encounter patrons who are desperate for help with various civil legal matters, from probate issues to immigration cases. Many ask for help—from filling out forms to understanding the content and import of those forms—that would put librarians dangerously close to the line on prohibited legal advice. For example, he explained, “What is good advice for trying to get your court date moved up? That’s a common one. Who should they talk to? What should they say?”

Unauthorized practice rules permit non-lawyers to share “information” about what the law says, but not “advice” about how the law relates to their own situation. That line is not always easy to identify. Buono lamented that the blurry line between allowable help and forbidden “unauthorized practice of law” activity means that even when librarians might be on safe ground, “a lot of librarians just won’t help...they don’t feel comfortable [helping] period.”³⁵ And indeed, NCAJ spoke with another librarian in Suffolk County who reacted with horror at the idea that librarians could be trained to give any kind of legal help. “I could tell you where the medical books are,” she said, “but you don’t want me to cut you open.”³⁶

Buono and some other librarians see things differently—they believe there is advice they could usefully be trained to give, including a more active role in guiding people who need help filling out legal forms. He was acutely aware of the fact that declining to help often meant leaving

³⁴ NCAJ zoom interview with Ellen Billie, AAA Fair Credit, Salt Lake City, UT, August 24, 2020.

³⁵ NCAJ telephone interview with Michael Buono, September 28, 2020.

³⁶ NCAJ telephone interview with law librarian, Suffolk County, NY, October 22, 2020.

people to the wolves. “When someone really needs help,” he said, “the last thing you want to do is just turn them away.”³⁷

Unfortunately, he said, unauthorized practice rules prohibited librarians from offering help they might be well equipped to offer with the right training. Buono was drawn to the idea of a “Good Samaritan” exception from UPL prohibitions, perhaps one accompanied by a robust training and certification process. “Liability has to be addressed,” he said. “If it’s not clear that the library is not liable, then it’s going to be difficult to reach mass adoption.”³⁸

NCAJ spoke with a Legal Document Assistant in a small California town who said that she regularly encountered people desperate for basic legal advice she is barred from providing:

There’s a lot of attorneys retiring up here, and dying, quite frankly. When people come to me, they are desperate—they have tried to do it on their own and they can’t. Even simple divorces—there’s so much paperwork now...Legal aid has pretty much collapsed in this area.

She went on to say that she used to send people to the local court’s self-help center—but that the staff attorney there had resigned and there seemed to be little prospect of replacing her.³⁹

Bonnie Brooks, a paralegal in New York State who works in family law, lamented that:

I get so many questions from friends and people I know because they know I’ve been doing this for so long. And, it’s just very hard not to cross that line. I catch myself a lot. I often think, I could just do this for them so quickly!

She concluded, “They may have one question, and I may know the answer, but I also know I have an ethical obligation not to answer it.”⁴⁰

Antonio Gutierrez, a tenants’ rights organizer in Chicago, told NCAJ that they were drawn to the idea of empowering tenants to be more effective advocates in court, as opposed to focusing entirely on trying to connect them to scarce legal representation. However, they said that because of unauthorized practice rules, “I think we’ve never allowed ourselves to imagine how that might operate.” They added:

We might for example do more pro se development of tenants—what to do, what to say. Not have attorneys speak on behalf of tenants, but have tenants share their stories directly to judges. We’ve thought about that in eviction court and also in immigration court but decided we can’t do that because of all these limitations we are talking about.

They added, “Having a lawyer is like they are leading us through that process and not like the person is taking charge of it.”⁴¹

³⁷ Michael Buono, remarks delivered on panel at *Decolonizing Justice* event, November 17, 2020.

³⁸ NCAJ telephone interview with Michael Buono, September 28, 2020.

³⁹ NCAJ telephone interview with LDA, California, August 2020.

⁴⁰ NCAJ telephone interview with Bonnie Brooks, October 2, 2020.

⁴¹ NCAJ and Beyond Legal Aid joint zoom interview with Antonio Gutierrez, Autonomous Tenants Union, Chicago, IL, August 20, 2020.

Some advocates did more than lament the limits unauthorized practice rules placed on them—they flatly refused to comply. One homeless rights advocate said that when she conducts know-your-rights trainings, she is instructed by the attorneys in her office to refrain from offering any kind of legal advice. “But an attorney can’t always come with me and people come up to me after,” she said. “I’m not going to say, ‘I can’t help you.’” With more than 15 years of experience under her belt, she felt that she was well equipped to give many people the advice they needed. As an example, she described being approached for help by people who receive housing vouchers—and then face discrimination from landlords who refuse to rent to them for precisely that reason:

I say, “that’s illegal, next time they say that, tell them it’s illegal and if they persist you will get a lawyer.” If you say that they will back down but most people accept it at face value and don’t push back. But that’s legal advice.

Just as importantly, she said, she had the institutional knowledge to help people exercise leverage over homeless shelters and other key institutions—but also not without crossing a line into offering “legal advice.”⁴²

⁴² NCAJ zoom interview with homeless rights advocate, October 28, 2020.

How UPL Rules Limit Diversity

The legal profession's steep financial and educational barriers to entry seriously impact its economic and racial diversity. The ABA reports that 85 percent of all US lawyers are white, while just 5 percent are black.⁴³

Some NCAJ interviewees saw reform of legal regulation as an important way to address this issue. Upsolve co-founder Rohan Pavuluri has argued that, “[b]y essentially requiring people to go to law school to provide legal assistance, UPL rules guarantee that only a fraction of black people who could competently provide legal assistance are actually allowed to provide such help.”⁴⁴

The importance of diversity goes far beyond issues of equity within the legal profession. A more diverse cadre of legal professionals could mean services that are more accessible and better tailored to the needs of diverse client populations. An activist who works with low-income pregnant women in northern California told NCAJ that, “my experience is that clients are much more willing to be forthcoming and honest when they can identify with the person speaking with them, to have trust...if you're not working through an interpreter.”⁴⁵ One paralegal in upstate New York told us that, “quite honestly, a lot of people are intimidated by attorneys. And to a lot of people, paralegals seem more down to earth and more like real people, they don't get so nervous.”⁴⁶

This report is largely focused on yet another untapped benefit— the value of diverse perspectives to policymakers working to imagine better approaches to legal services delivery. Sarah Bove, a Limited Licensed Legal Technician in Washington State, put it this way: “Any time you bring diversity to a field, you are going to open up new possibilities and perspectives. That's something American society as a whole has always benefitted from.”⁴⁷

Advocacy and Support

Some NCAJ interviewees provided direct legal advocacy assistance to people who would otherwise go it alone— whether in court, administrative hearings or other institutional settings. Those advocates emphasized two themes that lawyer-centric discussions tend to overlook. One is that many people need more than just “legal services”—they need help believing that it is really possible to use the law proactively to vindicate their rights. Another is that people's need for support is often about more than just legal expertise. Sometimes, it is about the confidence

⁴³ American Bar Association, *ABA Profile of the Legal Profession*, July 2020, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

⁴⁴ Rohan Pavuluri, “Unauthorized Practice of Law Rules Promote Racial Injustice,” *Law 360*, <https://www.law360.com/articles/1280193>.

⁴⁵ NCAJ telephone interview with non-profit organization official, San Francisco, CA, February 21, 2020.

⁴⁶ NCAJ telephone interview with paralegal, New York, October 2020.

⁴⁷ NCAJ zoom interview with Sarah Bove, Tacoma, WA, December 3, 2020.

that comes from having a seasoned advocate at one’s side—one who knows the institution and the process they are trying to use.⁴⁸

NCAJ spoke with Manuel Villanueva of the Restaurant Opportunity Center (ROC) in Los Angeles. ROC is a grassroots organization on a shoestring budget. It focuses on organizing, education and policy advocacy in solidarity with restaurant workers. Among his many other duties, Villanueva accompanies and helps represent workers— free of charge— when they bring wage theft and other complaints against their employers. Proceedings take place before the city’s labor commissioner, where the city explicitly allows the kind of non-lawyer “practice of law” activity Villanueva carries out there.

Villanueva described his role in the hearings this way:

Lawyers will not take these cases—there is not a lot of money involved. That’s why they come to us. As a representative I explain what happened, what laws were broken and what the light at the end of the tunnel looks like. I advise the worker if they get worked up or if they need an answer that they don’t know how to provide. Many people are afraid of their employer. They know a lot about them—their families, their children, even where they are from...and their immigration status...

He said that for many of the workers he helps represent, much more is at stake than the wages due to them:

A lot of times what comes out of that is not simply the money, it’s the fact that they were disrespected and humiliated and trying to stand up against the abuse that they suffered, and vindicate their rights. They always felt insignificant, and that that person with power is going to crush them. So it’s rewarding when we come out with some money in our hands but more than that it’s this feeling that, we did it! That sense of pride that they stood up for themselves.⁴⁹

One lesson ROC’s example helps illustrate is that new models of legal advocacy support should aim not only to provide legal guidance, but also to nurture litigants’ own feelings of confidence and empowerment.

Another inspiring example of this kind of support can be found in Arizona, where the state Supreme Court has authorized a pilot program that empowers non-lawyer Licensed Legal Advocates (LLAs) to support people in domestic abuse cases. The LLA program goes beyond initiatives in other states that allow non-lawyers to accompany domestic abuse survivors but bar them from providing them any legal assistance. The Arizona program partners with the University of Arizona law school to put seasoned advocates from Emerge— a non-profit organization that helps people faced with domestic abuse— through an eight-week training program. The advocates are then authorized to provide limited legal advice and other support

⁴⁸ See Rebecca Sandefur, *Legal Advice from NonLawyers: Consumer Demand, Provider Quality and Public Harms*, 16 Stan. J. C.R. and C.L. 283 (2020), available at <https://law.stanford.edu/publications/legal-advice-from-nonlawyers-consumer-demand-provider-quality-and-public-harms/#abstract>.

⁴⁹ NCAJ telephone interview with Manuel Villanueva, Los Angeles, September 25, 2020.

to the litigants, including in court.⁵⁰ Emerge described the importance of this program to NCAJ this way:

This program will address the critical need of ensuring that people experiencing domestic abuse have access to free and trauma-informed legal advice and support. Because our community, like others nationwide, severely lacks affordable legal services, individuals experiencing abuse who have limited resources have had to navigate civil legal systems alone. The program will benefit our community by enabling advocates who understand the nuances of domestic abuse to provide legal advice and support to survivors who otherwise might go into court alone. We look forward to the outcomes of this pilot program, which offers the potential to make important systemic changes in giving access to safety for so many survivors.⁵¹

The program, whose first cohort of trained advocates took up the new roles in January 2021, may serve as a model for other states.

Affordable Services for Middle Income People

Access to justice activism is often focused exclusively on the unmet legal needs of people living in poverty. This is partly because legal aid lawyers tend to act as the bar's primary voice of conscience on the larger issue of access to legal services. The plight of poor litigants is the injustice they confront every day and are most deeply inspired to fight against.

It certainly makes sense to focus on the least advantaged in designing models of service delivery. However, it is also important to consider the millions of Americans who are not poor—but cannot or will not contemplate the expense of hiring an attorney to help them with legal issues.

Several NCAJ interviewees work with middle income people who cannot afford or are hesitant to pay the steep costs of an attorney's services, but are ineligible for free legal assistance. In California, Legal Document Assistants (LDAs) are non-attorneys who are allowed to help clients fill out legal forms and perform other quasi-administrative tasks—but not to provide any sort of legal advice. Many people turn to LDAs because they want more legal help than they can afford—but LDAs' capacity to provide that help is sharply limited.

Angela Grijalva, a practicing LDA, described her profession's typical clients this way: "We service that margin of people who cannot afford an attorney but do not qualify for legal aid services. The individuals who, it'll cost them more money to take the day off work to go through the self-help clinics the courts offer, if they even offer one."⁵²

⁵⁰ For more information on the LLA program, see <https://law.arizona.edu/news/2020/02/new-licensed-legal-advocates-pilot-program>.

⁵¹ Statement from Emerge! provided to NCAJ, Feb 4 2021.

⁵² NCAJ telephone interview with Angela Grijalva, Sacramento, CA, September 16, 2020.

Kerry Spence, another California LDA, told NCAJ that she sees a tendency for conversations about unmet legal need to omit what she described as “a tremendous need among middle class people for what I call personal legal projects—uncontested divorce, wills and trusts, uncontested dissolutions, name changes—things that involve the court but are just document-driven.” She said she sees many middle-class litigants who would like to retain help with their legal matters but can’t afford or don’t want to pay a lawyer’s rates. “They don’t have the money to get legal services, and not enough time to schlep down to self-help center-- they want to *hire* someone to do it. But not an attorney.”⁵³

Some legal professionals expressed frustration that there was no way for them to get training and authorization to provide the kind of help middle income consumers often wanted. One experienced paralegal put it this way: “I have a friend right now going through a divorce, paying an attorney \$400 an hour to tell him the same things I could tell him, except I can’t—it’s the practice of law. I have a gag on me.” She added that at her former law firm, “I was getting paid crap, and watching clients rack up \$10,000 bills that they can’t pay. And then understanding, ‘OK, all of the time this attorney spent on this parenting case, I could have been doing it at half the rate except, that’s the practice of law!”⁵⁴

⁵³ NCAJ telephone interview with Kerry Spence, San Rafael, CA, September 29, 2020.

⁵⁴ NCAJ telephone interview with paralegal, November 2020.

A Model That Works – Ontario’s Independent Paralegals

Policymakers don’t have to look very far to discover a successful, large-scale model of non-lawyer practice. In Canada’s Ontario Province, more than 9,000 licensed paralegals work independently of lawyers across a range of legal matters.⁵⁵ Ontario paralegals have built successful practices representing litigants in small claims, traffic violation, consumer debt and landlord/tenant cases— as well as some minor criminal matters. Within their permitted scope of practice, paralegals can offer all of the services lawyers do, including representation in court.⁵⁶

Ontario’s paralegal program has helped expand access to quality legal services in matters where litigants traditionally go it alone. An independent evaluation of the program in 2012 called it a “remarkable success.”⁵⁷ Paralegals have added particular value in courts where lawyers generally do not practice. When NCAJ asked Ontario small claims court deputy judge Janis Criger what she thought of the paralegals who practiced before her she replied, “I love them.” She felt that paralegals were often more effective small claims court operators than lawyers. “Paralegals know small claims court a lot better than a lawyer does,” she said. “You can get yourself a fancy lawyer, but he won’t know how to handle himself in my court.” She acknowledged that some lawyers and judges still disliked the paralegal model but emphasized that “I am happy to have better-trained people in my court, and that’s about the sum of it.”⁵⁸

The Law Society of Ontario regulates lawyers and paralegals alike. Prior to 2007, independent paralegals were entirely unregulated in Ontario. Now, they are subject to credentialing and insurance requirements, along with Law Society oversight and discipline. While some paralegals opposed this move toward regulation, many feel that it has been a boon to their profession. Robert Burd is an experienced paralegal who is also the chair of the Law Society’s Paralegal Standing Committee. “Regulation gives the public confidence that their paralegal can do the thing they’ve been retained to do, and do it well,” he told NCAJ. “I’ve seen it grow from an underground movement to a respected profession.”⁵⁹

Paralegal regulation also means that Ontario has good data on the degree to which paralegals are the subject of complaints about their performance. On that front, too,

⁵⁵ <https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/faq#:~:text=How%20many%20lawyers%20and%20paralegals,licensees%20and%209%2C000%20paralegal%20licensees.>

⁵⁶ For more information about paralegal licensing and regulation, see <https://lso.ca/paralegals>. Provincial regulators are considering proposals to expand paralegal practice into family law as well.

⁵⁷ https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.html

⁵⁸ NCAJ telephone interview with Deputy Judge Janet Criger, Ontario, September 23, 2020.

⁵⁹ NCAJ telephone interview with Robert Burd, Ontario, September 15, 2020.

the results have been heartening—paralegals have been the subject of public complaints at roughly the same per capita rate as Ontario’s lawyers.⁶⁰

Activism Versus “Legal Services”

Several NCAJ interviewees argued that debates around regulating the practice of law were myopically focused on the delivery of legal services—as opposed to empowering people to use the law as a tool of activism and wider empowerment. Some worried that this left calls for “reform” skewed towards the creation of new, credentialed professional classes—while still denying grassroots activists and ordinary people space to use the law to fight for change.

Lam Ho, the founder and Executive Director of Beyond Legal Aid, expressed concern that “plans to open up practice to non-attorneys have focused on regulation and credentialing— in ways that can create new access issues and state control issues that are antithetical to the kind of radical grassroots work that a lot of our partners are engaged in.”⁶¹ Vivek Maru of Namati—a group with wide global experience supporting community paralegals and other legal empowerment initiatives— echoed that sentiment. He noted that, “I worry when groups get too fancy with credentialing because it tends to take some of the soul and some of the radicalism out of it.”⁶²

Antonio Gutierrez, a tenant organizer in Chicago, described how these concerns manifest themselves concretely in their organization’s work. They said that organizers need to partner with attorneys since they are not trained or authorized to offer any kind of legal advice themselves. But, they said, working with lawyers “has always been a challenge.” They explained:

Often, it keeps organizers in a blind spot that doesn’t allow for real collaboration. As organizers we are trying to agitate the tenants themselves and make sure they feel empowered to say, “Enough, I am not going to allow my landlord to disrespect me like this, they need to treat me as a human and see my humanity.” We want them to imagine they can request more than what they are maybe entitled to—like to request a written lease for a year even though the law does not require that. But then I have an attorney telling them the law does not allow them to do that, that if anything they might get three months to move out.

All in all, they Gutierrez said, “As organizers we want tenants to reimagine what the system should look like, and then meanwhile we have the attorney saying that the system we have is the only thing we have to work with.”⁶³

⁶⁰ Statistical information provided to NCAJ by the Law Society of Ontario.

⁶¹ NCAJ telephone interview with Lam Ho, February 26, 2020.

⁶² NCAJ zoom interview with Vivek Maru, Jay Monteverde, Michael Otto and Abigail Moy, Namati, October 8, 2020.

⁶³ NCAJ and Beyond Legal Aid joint telephone interview with Antonio Gutierrez, August 20, 2020.

III. Fears of Consumer Harm

Every debate around whether to authorize non-JDs to engage in “practice of law” activity centers on fears of possible consumer harm. This makes sense in theory – lawyers’ strict monopoly on the practice of law exists primarily in order to protect clients from incompetent and unethical legal services.

Unfortunately, lawyers have dominated conversations about the best way to protect consumers from harm in the same way they have dominated conversations about the idea and potential of reform. Lawyers opposed to reform sometimes caricature calls for change as a reckless drive to “deregulate” the practice of law. This is out of touch with reality.

Many of the non-lawyers NCAJ interviewed for this report also framed their views on legal empowerment around consumer protection imperatives. And in the same way that many had useful and concrete perspectives on the ways their own roles could be expanded to meet legal need, they also had sharp and pragmatic perspectives on the kind of consumer protection safeguards – like education, training and oversight -- that ought to go along with change.

For example, NCAJ spoke with Maren Schroeder, a practicing paralegal in Minnesota and the policy lead for the National Federation of Paralegal Associations. Schroeder served as part of a working group whose deliberations led Minnesota to create a pilot program that will allow credentialed paralegals to provide limited legal services independently of lawyer supervision.⁶⁴ She told NCAJ that she saw the potential of many paralegals to take on more responsibility— but also described the complex reality that paralegals are a diverse group with uneven training and expertise. She said:

I acknowledge that not every paralegal understands this stuff the way I do, and doesn’t have the same training I do. So as an unregulated profession we need to start slow. We need to work to understand what the threshold of education and experience is to qualify a person to give this advice.

She predicted that paralegals “will end up, at the end of the great experiment, looking a lot like the medical profession. Where some of us are allowed to perform more services, and those of us who are less experienced or less educated are going to provide less.”⁶⁵

Credentials Versus Experience

One of the most significant practical challenges any reform-minded state must tackle, is exactly how to define the objective credentials that authorized non-lawyers must possess in order to carry out practice of law activity. If states set the bar too low, they risk exposing consumers to

⁶⁴ See *Report and Recommendations to the Minnesota Supreme Court*, Implementation Committee for Proposed Paralegal Professional Pilot Project, March 2, 2020, <https://www.mncourts.gov/mncourtsgov/media/Implementation-Committee/Report-and-Recommendations-to-Minnesota-Supreme-Court-reduced-size.pdf>.

⁶⁵ Maren

dangerously incompetent legal practitioners. If states set barriers to entry too high, they risk creating a new class of legal services provider that few people will be willing or able to join.

In the states that have considered reforms so far, lawyers leading reform efforts have tended to embrace universal education and training requirements. Many of the people NCAJ interviewed for this report argued that states should take more flexible approaches to credentialing. These, the argument goes, should account for the reality that many non-lawyer professionals already have a sound understanding of certain areas of law based on many years of practical experience.

For example, NCAJ spoke with Bonnie Brooks, a seasoned paralegal with decades of work experience in New York State. She described her frustration with requirements that for many years had required that any paralegal possess a Bachelor's Degree to get a Registered Paralegal (RP) certification. An RP certification serves to demonstrate that a paralegal possesses an advanced command of their profession. A paralegal can obtain the certification by sitting for an exam—if they possess the requisite education and experience requirements.⁶⁶ Brooks described her situation this way:

Why should I have to get a Bachelor's to get the certificate? I don't have a BA because my life went a different way back then, but I've got 20 years' experience and I even teach at a paralegal program— but I cannot take this exam? I could have even had a degree in art—it made no sense. It just made no sense to me.

The RP certification requirements have since been changed to accommodate a wider range of educational backgrounds.⁶⁷ Brooks saw this as a good example of making credentialing requirements flexible enough to capture different sources of expertise and competence. She added, “That's the same concept that they should apply to expanded paralegal roles.”⁶⁸

Washington State's Limited License Legal Technician (LLLT) program offers a useful cautionary tale about the importance of reasonable credentialing. The program was the first of its kind in the nation, allowing credentialed non-JDs to provide limited legal services in family law matters. The program has succeeded in delivering high quality services and protecting consumers—but it has failed to attract enough participants to offer services at the scale the program's proponents had hoped. There are several reasons for this, including the Supreme Court's failure to follow through on plans to expand the program to new practice areas. One key factor, though, was the extremely onerous credentialing requirements that were put in place as a consumer protection measure.

While consumer protections are vital, many observers regard the LLLT program's hurdles as a kind of overkill that ultimately helped throttle the program's growth. Would-be LLLTs are required to have an Associates' degree, take 45 credits of legal studies courses, pass three

⁶⁶ See <https://www.becomeaparalegal.org/paralegal-certification/>

⁶⁷ For more information on the RP certification, see <https://www.paralegals.org/i4a/pages/index.cfm?pageid=3295>.

⁶⁸ NCAJ telephone interview with Bonnie Brooks, October 2, 2020.

examinations, and obtain at least 1500 hours' worth of work experience under a lawyer's supervision.⁶⁹

These requirements are so onerous and expensive that they likely dissuaded many potential candidates from signing up. As one practicing LLLT put it, "It's like they want your firstborn child in exchange for a license that doesn't let you do very much."⁷⁰

Similarly, some advocates noted that expensive and time-consuming licensing regimes offered little to many grassroots activists. They are unlikely to have the means to acquire a new professional license. Lam Ho of Beyond Legal Aid framed the issue this way:

How can we have credential-based regulation...alongside an approach that really empowers the work of community organizations with limited budget or no staff at all? If they cannot access the new model, access to justice has once again only addressed a very limited audience.

He added, "That's my worry. Access to justice initiatives always have this tendency to have a boundary that excludes so many people."⁷¹

Elizabeth Olvera, a Legal Document Assistant in California who serves on the state bar's paraprofessional program working group, put the problem this way: "Lawyers always think about this like, how do we make these people get the same education and training that lawyers get. But we know that doesn't work."⁷²

New Roles for Social Workers?

In New York, a working group set up by the state courts recently proposed allowing social workers an expanded role in legal services delivery.⁷³ The idea, which NCAJ broadly supports, is that social workers with the right training would be well-positioned to offer legal and advocacy help to disadvantaged litigants. The working group included only lawyers and no social workers, however.

Some of the social workers and activists NCAJ spoke with had very concrete perspectives on both the promise and the perils of expanded social worker roles. One New York social worker who works with a federal program on veterans' justice outreach emphasized the potential in the idea. She cited consumer debt and child support as areas where "with some really good training, our work force could be really effective in offering some good services there. Even just training how to ask the right questions—like with debt cases, we don't ask "are you responding to the [creditor's] letters." On the other hand, she emphasized that in some cases

⁶⁹ For more information on LLLT licensing requirements, see <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/become-a-legal-technician>.

⁷⁰ NCAJ telephone interview with LLLT, Washington, February 2020.

⁷¹ NCAJ interview with Lam Ho, February 26, 2020.

⁷² NCAJ zoom interview with Elizabeth Olvera, September 10, 2020.

⁷³ See Commission to Reimagine the Future of New York's Courts, Report and Recommendations of the Working Group on Regulatory Innovation, December 3, 2020, https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf.

there could be a degree of conflict between a social worker’s job and a client’s legal services needs. For example, she said, “there could be tension between me wanting them to get more treatment and them maybe not wanting to be under supervision.”⁷⁴ Other social workers noted that in some contexts, it could be difficult to square social workers’ obligations as mandatory reporters, with the interests of their clients as litigants – a concern also noted in the working group’s report.

Caitlin Becker, a social worker with Bronx Defenders in New York, emphasized that social workers employed by state agencies often act in a *de facto* prosecutorial or inquisitorial role against her clients. She said:

I don’t want social workers to have more power than they already do. I worry about the power they already do have...often, the way we see this come up is with social workers who...tell our clients misinformation all the time about whether they should go to housing court, what they should do with benefits.⁷⁵

Similarly, one homeless rights advocate drew a sharp distinction between social workers in government roles and social workers who work for non-profit organizations. While her clients often experience government social workers as adversaries, she said, social workers in non-profit settings might be well positioned to provide more assistance and advice with legal problems. The latter, she argued, are already “100% advocates. They have no choice, really.”⁷⁶

The New York working group took a very positive step in putting legal advocacy by social workers on the state’s policy agenda. Now, as it works toward developing its recommendations, the working group should move to include social workers among its members.

IV. Equity, Career Advancement and “Dead-End Jobs”

For some non-lawyers, the idea of expanding access to the “practice of law” has very immediate and personal implications. NCAJ spoke with professionals who hoped for new opportunities for career advancement— and an end to constraints on their judgment and independence that they saw as pointless and demeaning.

One paralegal with a legal aid organization in New York City told NCAJ that she struggled to retain her most talented staff for any length of time. “It’s a dead-end job,” she said. “There’s no advancement, you’re done. To the extent that it takes skill to do this kind of work, if there is no recognition of that, you don’t really have career pathways beyond being a case handler. There’s pay equity issues—you can’t advance and make more money. You essentially force talent out

⁷⁴ NCAJ telephone interview with panel of Veterans’ Administration social workers, New York, September 9, 2020.

⁷⁵ NCAJ zoom interview with Caitlin Becker, New York, November 12, 2020.

⁷⁶ NCAJ zoom interview, October 2020.

because there is no pathway. You devalue their labor—you're basically saying, you're temporary anyway."⁷⁷

Also in New York City, a social worker with long experience working with legal services groups told us that “in courts, there’s always a hierarchy—people always look at our social worker views as kind of a supplemental thing and not something that has real value. We feel silenced in those spaces. The field itself needs to legitimize the contributions of non-legal staff.”⁷⁸

That idea of lending legitimacy and respect to work that non-lawyer professionals and activists are already doing cut across many NCAJ interviews. Some complained that their jobs required them to offer legal advice in order to save their clients from disaster—and that far from being recognized for developing that expertise, this aspect of their work was essentially illicit.

In other cases, professionals complained that supervising attorneys recognized their expertise enough to give them *de facto* practice of law responsibilities—but not the recognition or compensation that ought to come with those duties. For instance, NCAJ spoke with one paralegal in Vermont who said that, “at my old firm, I was the one who supervised our paralegals, not the attorneys. When attorneys trust their paralegals enough, it’s easy for them to ‘forget’ that they are supposed to be supervising them.” However, this paralegal was not recognized or compensated for this work. In fact, she still confronted the demeaning reality that she could not do any substantive work without the sign-off of an attorney who contributed nothing to the product. She said, “It’s very simple, nothing complicated about it, but my ethical obligation as a paralegal is to not turn it in without the attorney signing off.”⁷⁹

Maren Schroeder, a practicing paralegal and the National Federation of Paralegal Associations’ policy lead, told NCAJ that:

There are good law firms out there that treat and pay their paralegals well and have this tiered model of service. But when that’s not being replicated, especially in rural areas, we’re losing an opportunity to get those services and you’re losing good talent from the industry.

She added that paralegals as a group are often powerless to confront the workplace dynamics that see some of them doing substantive work without recognition or compensation. “Paralegals can’t aggressively build political power against lawyers because if we do, we are out of a job,” she said.⁸⁰

⁷⁷ NCAJ telephone interview, New York, February 2020.

⁷⁸ NCAJ telephone interview, New York, February 2020.

⁷⁹ NCAJ zoom interview, October 2020.

⁸⁰ NCAJ zoom interview with Maren Schroeder, November 13, 2020.

V. Conclusion

As more states take up serious discussions around legal regulatory reform, they should ensure that those deliberations put perspectives from beyond the legal profession at center stage. There should be no more government, court or bar-led efforts to consider new models of legal services delivery that have only lawyers at the table.

This report makes the case that the kind of inclusivity we are calling for is the only way to accurately understand the most critical needs and imagine the best ways to address them. The people whose perspectives we centered here are concrete examples of the larger added value of this approach.

Many of the people we spoke with understood and emphasized key areas of unmet legal need that lawyer-led discussions give short shrift to. The need for wider access to basic legal advice and institutional knowledge about the courts, for example, as opposed to credentialed models of full-scale service delivery. Many also had a clear perspective on the unmet legal needs of middle-income families—a group whose interests are sometimes frozen out of service delivery models that seem to think only of the wealthy and the poor.

In the same way, many of our interviewees were drawn to models of legal assistance that lawyer-led discussions generally don't touch on and can't quite imagine on their own. Most notably, many non-lawyers had ideas about the kind of help they themselves are poised to deliver if only they had the right training— or even just the freedom— to do the work. Many of the activists among our interviewees emphasized a point that too often gets ignored—freedom to use the law means more than just service delivery. It is also aligned with the ideals of free speech in that people want to be free to use the law to fight injustice and proactively change the world around them.

The starting point of any reform effort should be a clear understanding of the urgency and nature of unmet legal needs—and the kind of help people are most in need of. Lawyers have a clear perspective on some parts of that problem, and not others. Only by drawing in the perspectives of other professionals and activists can states begin work with the right foundation.

In the same way, the practical challenge of imagining solutions to America's access to justice crisis needs to include a range of perspectives from beyond the legal profession. Some states are doing this already. The California bar's Paraprofessional Program Working Group has several non-lawyer members. The Minnesota working group that recommended the state's ambitious pilot of independent paralegal practice included paralegals as well as lawyers. And in Utah, the Office of Legal Services Innovation—charged with administering the state's pathbreaking regulatory sandbox program— has a good mix of lawyers and people with other backgrounds in key positions.

Other states should look to those examples—but also realize that they do not go far enough. States need to go beyond including legal professionals who are not lawyers. They also need to include activist voices, social workers, librarians, and many others. They need to be deliberate and creative in identifying a broad enough range of perspectives to ensure that new policies are informed by a deep understanding of what unmet legal needs look like in any given state. They need to ensure that proposed policy solutions are rooted in an understanding of what key non-lawyer activists and professionals are already doing, what existing rules block them from doing, and what they could be empowered to do more of or do better.

All of this is possible. The result will be and sharper and more useful policy discussions that are informed by better facts. America's access to justice crisis demands bold solutions, creativity—but also a great deal of caution and deliberation. Starting off with the right mix of people at the table, is clearly the right first step.