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### Recommended Citation

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Licensing Paralegals to Practice Law:  
A Path Toward Bridging the Justice Gap in Minnesota

Conner W. Suddick

An Honors Thesis  
Submitted for partial fulfillment of the requirements  
for graduation with honors in Legal Studies  
from Hamline University

March 26th, 2019

## Acknowledgments

Justice is both personal and political; it impacts the individual and collective. Understanding justice is a knot of interrelated questions. It has been a privilege to have the opportunity to begin unravelling that knot over the past few years at Hamline University. I am so grateful for my thesis advisors Professor Leondra Hanson and Professor Jennifer Will for guiding me through this process, and being a tremendous source of encouragement. In addition, I want to thank Dr. Valerie Chepp of the Social Justice Program and Minnesota Supreme Court Justice Anne McKeig for serving on my defense committee to enrich my intellectual development in the context of this thesis. Finally, I would be remiss not to acknowledge Dr. Máel Sheridan Embser-Herbert, Dr. Valerie Chepp, and Dr. Susie Steinbach for being transformative mentors during my undergraduate education and beyond.

I dedicate this thesis to my parents, Kevin and Lori Suddick, for their unconditional support, and always pushing me to listen to the world around me. Over the past few years, I realized that listening is a crucial civic action for building equity.

## Abstract

There are few legal avenues for low-income and other marginalized groups in the United States to seek civil justice. A lack of legal assistance in civil issues can be detrimental to a person's health and wellbeing. Given this reality, the legal profession must broaden its capacity to serve these needs, and one path is to embrace the aid of paralegals. In 2016, the legal community of Minnesota had conversations about whether the state should provide limited licenses to paralegals. To study models from across the country, the Minnesota State Bar Association (MSBA) formed the Alternative Legal Models Task Force. In 2017, the Task Force released its recommendations on how Minnesota should address paralegal licensure. When the report was introduced for MSBA adoption, reservations remained, and the Board of Governors decided, at least for the time being, not to pursue developing a model rule. This decision by the MSBA leaves open the question of how paralegals could help close the civil justice gap in Minnesota. Minnesota should license paralegals to practice law in a limited scope to diversify legal service delivery. To illustrate, this article provides an overview of Minnesota's historical attempts to mitigate the justice gap, examines ways paralegals have been licensed in other jurisdictions, and ultimately affirms the recommendation of the Alternative Legal Models Task Force that Minnesota should license paralegals to provide a limited scope of legal services to complement access to justice efforts, similar to nurse practitioners in the medical profession. To propel the legal profession forward, paralegal practitioners would augment existing services and bridge the justice gap across a growing divide.

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The legal avenues for marginalized and indigent people seeking civil justice in the United States are few and far between; the legal profession should broaden its capacity to serve these needs, even if that requires deviating from familiar norms. In 2018, Bryan Stevenson, a leader for equal justice for those with death row sentences, was recognized with the American Bar Association (ABA) Medal - the ABA's highest honor. During his address, he challenged attorneys to deepen their commitment to access to justice, urging them "to be willing to do things that are uncomfortable . . . because justice doesn't come when you only do the things that are comfortable and convenient. [W]e advance justice only when we're willing to do things that are uncomfortable."<sup>1</sup> To reduce civil justice disparities in the United States, it is time for the legal profession to step outside of its comfort zone: To bridge the justice gap, lawyers should embrace the aid of paralegals.

According to the World Justice Project, in 2018 the United States was ranked 15th out of 24 other Western European and North American countries on measures of civil justice, defined as "whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system."<sup>2</sup> Compared to other high income countries, the United States ranked 25th out of 35 countries on civil justice issues.<sup>3</sup>

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<sup>1</sup> Kevin Davis, *Bryan Stevenson calls on lawyers to get uncomfortable and deepen commitment to justice*, Am. B. Ass'n. J. (Aug. 4, 2018, 9:13 PM), [http://www.abajournal.com/news/article/bryan\\_stevenson\\_calls\\_on\\_lawyers\\_to\\_get\\_uncomfortable\\_and\\_deepen\\_commitment](http://www.abajournal.com/news/article/bryan_stevenson_calls_on_lawyers_to_get_uncomfortable_and_deepen_commitment).

<sup>2</sup> World Justice Project, *Rule of Law Index 2017-2018: United States*, 2-3 (last visited Dec. 3, 2018), [https://worldjusticeproject.org/sites/default/files/documents/ROLIndex\\_2017-2018\\_United%20States\\_eng.pdf](https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2017-2018_United%20States_eng.pdf). Globally, the United States performed well, ranking 19 out of 113 countries. Despite this favorable ranking, when compared to countries within a similar income range and geographic location, the United States is in the 40th and 30th percentile respectively. *See also* World Justice Project, *Civil Justice (Factor 7) of the Rule of Law Index* (last visited Dec. 11, 2018), <https://bit.ly/2Rz7Lwg>.

<sup>3</sup> *Id.*

The United States does not guarantee representation or legal assistance for people with civil legal issues, only criminal, despite how many people encounter civil legal issues.<sup>4</sup> Civil legal needs are integral to people's livelihoods. A lack of legal assistance in civil issues can be detrimental to a person's health and wellbeing. Raie Gessesse, an advocate for health equity, illustrates the intersection of public health and legal assistance:

Poor upkeep of affordable housing complexes may result in the growth of mold and other contaminants that directly impact the health of the tenants. Without legal assistance, tenants of these buildings are often unable to navigate the legal process to ensure that their right to adequate housing is met. Affordable housing does not and should not equate to substandard living conditions for people. Communities living in poverty, or communities living off of very few dollars, bear the burden of defending their wellness by seeking legal assistance in response to poor social conditions. Because of the uncertainty of their situation, they may face increased levels of stress, fear, and anxiety that contributes to isolation from seeking out legal remedies.<sup>5</sup>

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<sup>4</sup> *Infra* at note 29 (Discussion of *Gideon v. Wainwright* and the idea of the Civil *Gideon*).

<sup>5</sup> Conner Suddick & Raie Gessesse, *Lacking Affordable Legal Assistance is a Public Health Issue*, MinnPost (Aug. 30, 2018), <https://www.minnpost.com/community-voices/2018/08/lacking-affordable-legal-assistance-public-health-issue/>.

Moreover, vulnerable populations like women,<sup>6</sup> people of color,<sup>7</sup> and the elderly<sup>8</sup> are more likely to be low-income. Millions of people in the United States cannot resolve their legal needs due to a lack of resources.<sup>9</sup>

In 2017, the Legal Services Corporation, the nation's largest funder of civil legal aid programs, reported that 71% of low-income households experienced at least one civil legal problem.<sup>10</sup> For middle-income people, 40 to 60 percent of their legal needs were not met.<sup>11</sup>

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<sup>6</sup> Meika Berlan & Morgan Harwood, *National Snapshot: Poverty Among Women & Families*, Nat'l Women's L. Ctr, 1, <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf> (last visited Dec. 3, 2018). ("More than 2 in 5 (47 percent) of these women lived in extreme poverty, defined as income at or below 50 percent of the federal poverty level. This means 1 in 17 women lived in extreme poverty last year. Women were more likely than men to live in poverty in 2017, 12 percent and 9 percent, respectively. Women were also more likely than men to be in extreme poverty: 6 percent of women versus 4 percent of men lived in extreme poverty in 2017.").

<sup>7</sup> *Id.* ("Women in all racial and ethnic groups were more likely than white, non-Hispanic men to be in poverty. Nearly 1 in 10 (9 percent) of white, non-Hispanic women lived in poverty in 2017, compared to 7 percent of white, non-Hispanic men. However, poverty rates were particularly high for women of color"). See also Deborah Povich, Brandon Roberts, and Mark Mather, *Low-Income Working Families: The Racial/Ethnic Divide*, The Poor Working Families Project, 1 (2015), [http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report\\_Racial-Ethnic-Divide.pdf](http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report_Racial-Ethnic-Divide.pdf). ("Among the 10.6 million low-income working families in America, racial/ethnic minorities constitute 58 percent, despite only making up 40 percent of all working families nationwide.").

<sup>8</sup> *Id.* at 5. ("Women made up nearly two-thirds (63 percent) of all poor people 65 and older in 2017"). See also Juliette Cubanski, Kendal Orgera, Anthony Damico, & Tricia Neuman, *How Many Seniors Are Living in Poverty? National and State Estimates Under the Official and Supplemental Poverty Measures in 2016*, Henry J. Kaiser Fam. Found. (Mar. 2, 2018), <https://www.kff.org/medicare/issue-brief/how-many-seniors-are-living-in-poverty-national-and-state-estimates-under-the-official-and-supplemental-poverty-measures-in-2016/>. ("Nearly 21 million people ages 65 and older had incomes below 200% of poverty under the Supplemental Poverty Measure in 2016 (42.4%), compared to 15 million (30.4%) under the official measure.").

<sup>9</sup> Legal Serv. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, 8 (Jun. 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>. ("The 133 LSC-funded legal aid organizations across the United States, Puerto Rico, and territories will serve an estimated 1 million low-income Americans in 2017, but will be able to fully address the civil legal needs of only about half of them. In 2017, low-income Americans will receive limited or no legal help for an estimated 1.1 million eligible problems after seeking help from LSC-funded legal aid organizations."). It is important to note that this source only studied the people who come to Legal Service Corporation-funded organizations, which only make up a portion of civil legal aid providers.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.*



Therefore, low- and middle-income persons in the United States do not have equal access to civil justice.

To counter these disparities, many people turn to legal aid programs. Unfortunately, programs like legal aid are only meeting part of the need in the United States. Many people who have qualifying issues are turned away from existing providers of civil legal aid due to stringent income guidelines<sup>12</sup> and a lack of capacity.<sup>13</sup> Moreover, middle-income persons who do not qualify for legal aid often cannot afford a lawyer. This leaves many people in the United States with nowhere else to turn. The average cost of a mid-career attorney is approximately \$400 per hour; consequently, low- and middle-income families understandably do not prioritize legal assistance over putting food on the table.<sup>14</sup>

Given the lack of legal avenues, many people are forced to represent themselves. Pro se litigants encounter barriers that are frustrating to judges, opposing parties, and of course, to the litigants themselves. Pro se parties' cases take more of the court's time due to a lack of knowledge of civil procedure, discovery, and written documents.<sup>15</sup> In egregious instances, some

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<sup>12</sup> 45 C.F.R. § 1611 (2016), Appendix A. Many civil legal aid providers use the 125% federal poverty guidelines in order to determine legal service eligibility. For a family of four, that is \$31,375. See ProJustice Minn. 2018 Federal Income Poverty Guideline (last visited Feb. 9, 2018), <https://www.projusticemn.org/fedpovertyguidelines/>.

<sup>13</sup> Legal Serv. Corp., *supra* note 8 at 8.

<sup>14</sup> Civ. Div. of the U.S. Att'y's Off. of D.C., *USAO Attorney's Fees Matrix*, <https://www.justice.gov/usao-dc/file/796471/download> (last visited Dec. 7, 2018) (a tool the U.S. Attorney's Office uses to determine reasonable attorney's fees). An unfortunate reality is that some people are not seeking legal help because they do not understand that their issues are legal in nature. See Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. Rev. 443, 448 (2016), <https://bit.ly/2FNFmkU>.

<sup>15</sup> See Dan Gustafson, Karla Gluek, & Jon Bourne, *Pro Se Litigation and the Costs of Access to Justice*, 39 Mitchell Hamline L. Rev. 32, 37-38 (2012), <https://bit.ly/2DXrn9M> (describes a study by the Pro Se Project examining the implications of *pro se* litigants). See also Denise. S. Owens, *The Reality of Pro Se Representation*, 82 Miss. L. J. Supra 429 (2013), <http://mississippilawjournal.org/2014/11/the-reality-of-pro-se-representation/> ("Well, a courtroom has rules just like those childhood games we all loved. Courtroom rules, however, are specific, complex and will determine the outcome of a case. So, imagine being a pro se litigant who does not know the rules. If you don't know

pro se litigants face impatient court personnel. In one instance, when a man was told by a trial court that he did not have the correct form, the man began to question the judge about how to properly fill it out. The district court judge responded “I’m not your secretary” and dismissed him from the courtroom.<sup>16</sup>

To address civil justice disparities, bar associations have formed a variety of work groups, usually called Access to Justice Commissions, which seek to expand civil justice by developing strategies to be implemented across their jurisdictions.<sup>17</sup> These commissions propose a variety of solutions to access to justice issues.

To meet the needs of low- and middle-income people, some jurisdictions are exploring alternative legal service delivery models. States like California, New York, Arizona, Washington State, and Utah have either implemented or are in the process of creating paraprofessional licensure models.<sup>18</sup> In 2016, the Minnesota State Bar Association had conversations about whether the state should license paraprofessionals in order to provide legal advice. To study

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the rules to the game, how can you win? If you don’t know the objective of the game, how can you cross the finish line?”).

<sup>16</sup> Deborah L. Rhode, *What We Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. Rev. 429, 431(2016), [https://www.americanbar.org/content/dam/aba/images/office\\_president/rhode\\_whitepaper.pdf](https://www.americanbar.org/content/dam/aba/images/office_president/rhode_whitepaper.pdf).

<sup>17</sup> Am. B. Ass’n Resource Ctr for Access to Just. Initiatives, *Definition of Access to Justice Committee*, 1 (Jul. 2011), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_definition\\_of\\_a\\_commission.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_of_a_commission.authcheckdam.pdf) (ABA’s definition of an Access to Justice Committee). See generally Am. B. Ass’n, *Access to Justice Commissions*, [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/resource\\_center\\_for\\_access\\_to\\_justice/atj-commissions/](https://www.americanbar.org/groups/legal_aid_indigent_defendants/resource_center_for_access_to_justice/atj-commissions/) (last visited Dec. 2, 2018) (list of resources from across the country about Access to Justice Commissions). Despite their formation, the presence of an Access to Justice Commission does not necessarily guarantee that it is effective. Some states like California, Alaska, Washington State, New York, and Washington D.C. have active Commissions that continue to address the justice gap. Other states may have an Access to Justice Commission, but it is ineffective within its jurisdictions. There are also states, like Minnesota, North Dakota, and South Dakota, that do not even have an Access to Justice Commission.

<sup>18</sup> Am. B. Ass’n. Commission on the Future of Legal Serv., *Issues Paper Concerning New Categories of Legal Services Providers* (Oct. 16, 2015), [https://www.americanbar.org/content/dam/aba/images/office\\_president/delivery\\_of\\_legal\\_services\\_completed\\_evaluation.pdf](https://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services_completed_evaluation.pdf) (provides an overview of different licensure models and programs for paraprofessionals to enhance access to justice).

models from across the country, the Minnesota State Bar Association (MSBA) formed the Alternative Legal Models Task Force, which sought input from practitioners from across the state. The Task Force was formed as the follow up to the work of the Task Force on Legal Education. In 2017, the Task Force released its recommendations for how Minnesota should address paralegal licensure. When the report was introduced for MSBA adoption, reservations remained, and the Board of Governors decided at least for the time being not to pursue drafting a model rule based on the recommendations by the Alternative Legal Models Task Force. This decision leaves open the question of how paraprofessionals could help close the civil justice gap in Minnesota.

Minnesota should license paralegals to practice law in a limited scope to diversify legal service delivery. To illustrate, this article provides an overview of Minnesota's history of attempts to mitigate the justice gap and proposes that Minnesota's judiciary and legislature should act on the idea of paraprofessional licensure. To substantiate this claim, Part I of this article will provide an overview of civil legal aid and access to justice initiatives in Minnesota. Part II will provide a more in depth analysis of paraprofessional licensure programs across the United States. Finally, Part III will demystify major objections of paralegal licensure as they pertain to concerns of the Minnesota legal community.

## Part I: An Overview of Access to Justice Initiatives in Minnesota

Being able to seek remedy for legal issues is a fundamental right, as the Minnesota Constitution illustrates:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.<sup>19</sup>

Over thirty years ago, in 1984, Minnesota Supreme Court Justice Rosalie Wahl addressed the Ramsey County Volunteer Panel, stating that “once again, in this area of providing legal services to the disadvantaged as in so many other areas, Minnesota has shown itself to be a community of concerned and caring people.”<sup>20</sup> Unfortunately, in the years since this proclamation, the conversations by the Minnesota bench and bar have not yielded policy changes sufficient to address the growing justice gap.

Over the last century in Minnesota, civil legal aid,<sup>21</sup> pro bono, judicial programs, and law school legal clinics have been the primary means to provide essential legal services to people who would otherwise go without it. To understand access to justice developments in Minnesota and why licensing paralegals would be a benefit to the people and profession, it is necessary first to discuss the history of access to justice initiatives in Minnesota.

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<sup>19</sup> Minn. Const. art. I, § 8.

<sup>20</sup> Angela McCaffrey, *Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients*, 13 Minn. J. of L. and Ineq. 77 (1995), <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1437&context=lawineq> (quoting from Justice Rosalie Wahl, Address at the Tenth Anniversary Celebration of the Ramsey County Volunteer Panel (Nov. 8, 1984), in Daniel P. O’Keefe, *Volunteer Lawyers Honored*, Ramsey Barrister, Dec. 1984, at 2).

<sup>21</sup> Civil legal aid is a broad category of services, primarily provided by legal services organizations, to people with civil legal issues who cannot afford to retain a lawyer.

*Minnesota's Landscape for Access to Justice: 1900-2000*

The 20th century brought about the first legal service organizations in Minnesota. In 1909, the Legal Aid Bureau was established by the Associated Charities of St. Paul. The goal of the Bureau was to provide legal advice and representation to low-income people.<sup>22</sup> In what would later be known as Southern Minnesota Regional Legal Services (SMRLS), the Legal Aid Bureau consisted of a single attorney who primarily served people with financial and domestic legal issues.<sup>23</sup> Beginning in 1913, another organization called the Legal Aid Department opted to serve low-income people in the areas of wage disputes, domestic affairs, and housing.<sup>24</sup> The Legal Aid Bureau and the Legal Aid Department served residents in St. Paul and Minneapolis respectively. The organizations relied on funding primarily from private charities and law firms because there were no federal or state funds specifically dedicated to legal services.

Despite these crucial developments, it was found that in 1952, around 52% of Minnesotans did not think there was a place where low-income people could go for free legal advice.<sup>25</sup> More broadly, there was a sense of concern surrounding low-income persons living outside the metro area, in greater Minnesota, who needed access to free legal services.<sup>26</sup> In 1952,

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<sup>22</sup> S. Minn. Reg'l Legal Serv., *Our History* (last visited Nov. 17, 2018), <http://www.smrls.org/about-us/history/>.

<sup>23</sup> McCaffrey, *supra* note 20 at 78.

<sup>24</sup> Legal Aid Hist., *Celebrating 100 Years: 1913* (last visited Nov. 17, 2018), <http://mylegalaid.org/about/our-story/timeline/>.

<sup>25</sup> Legal Aid Hist., *Celebrating 100 Years: 1952* (last visited Nov. 17, 2018), <http://mylegalaid.org/about/our-story/timeline/>.

<sup>26</sup> U.S. Census Bureau, *American Fact Finder* (last visited Nov. 17, 2018), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>. Moreover, there is a disproportionately low number of legal service providers in greater Minnesota due to the majority of Minnesota's population being based in the Minneapolis and Saint Paul metropolitan area, which is comprised of Hennepin, Ramsey, Anoka, Dakota, Washington, Scott, Carver, Sherburne, Chisago, Isanti, Le Sueur, Mille Lacs, and Sibley County. Between these counties, over 60% of Minnesota's population lives within these 12 counties.

the Legal Aid Services of Duluth was founded to provide civil legal assistance to those living in the Lake Superior region.<sup>27</sup> However, there were still inadequate formal structures in the remainder of greater Minnesota. In the central, southwest, and northwest regions of Minnesota, legal services for low-income people were largely performed by local attorneys who organized their own volunteer programs.<sup>28</sup> As programs continued to try to meet the need, tremendous disparities persisted.

Due to national movements and advocacy in the 1960s, Minnesota was able to secure new resources. Across the country, the 1960s was an era of activism, advocacy, and calls for protections of civil rights. The contemporary access to justice movement was born as concerned attorneys brought attention to disparities in the legal system through the landmark *Gideon v. Wainwright* decision, which required the government to provide representation in criminal cases for indigent people. Dedicated public interest law advocates demanded more accessible civil legal services with the similar changes that occurred for criminal legal services after *Gideon*.<sup>29</sup> The National Legal Aid Association reported that between 1950-1960, the number of legal aid offices in the United States grew from 87 to 210.<sup>30</sup> In 1960, the Ford

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<sup>27</sup> McCaffrey, *supra* note 20 at 81.

<sup>28</sup> *Id.*

<sup>29</sup> The United States provides representation for indigent people with criminal charges following the *Gideon v. Wainwright* decision. See *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). As a result of the changes that came from the *Gideon* decision, some hope to see the same rights extended to people with civil legal issues. See generally Bernice K. Leber, *The Time for Civil Gideon is Now*, 25 *Touro L. Rev.* 1, 8 (2013), <https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1251&context=lawreview>. (asserting how despite economic challenges, all Americans must have representation to uphold the ideals in our Pledge of Allegiance).

<sup>30</sup> Legal Aid Hist., *Celebrating 100 Years: 1960* (last visited Jan. 17, 2019), <http://mylegalaid.org/about/our-story/timeline/>.

Foundation funded the National Council on Legal Clinics for the development of legal clinics.<sup>31</sup>

In 1966, the Office of Economic Opportunity (OEO) established the first federal grant for legal aid for \$42,030, which started over 269 legal aid organizations.<sup>32</sup>

With access to new resources, Minnesota organizations were able to expand their capacity or establish new projects. In 1966, the Legal Advice Clinic (now the Volunteer Lawyers Network) was established to guide low income people through challenging legal problems with volunteer attorneys. This program began as a way to coordinate and centralize pro bono efforts in Hennepin County.<sup>33</sup> The development of these programs in Minnesota was complemented by groundbreaking developments at the national level.

In 1974, the Legal Services Corporation was created as a bipartisan effort to fund legal aid initiatives across the country.<sup>34</sup> The organization's purpose was not only to fund civil legal aid, but also to further develop infrastructure across the country. With support of the Legal Services Corporation, Minnesota was able to expand and revitalize six legal aid programs: Anishinabe Legal Services, Judicare of Anoka County, Legal Aid Services of Northeastern Minnesota, Legal Services of Northwest Minnesota, Mid-Minnesota Legal Assistance, and

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<sup>31</sup> J.P. Ogilvy, *Celebrating CLEPR's 40th Anniversary: The Early Development of the Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 *Clinical L. Rev.* 11 (2009) (quoting Howard R. Sacks, *Education for Professional Responsibility: The National Council on Legal Clinics*, 46 *A.B.A. J.* 1110, 1114 (1960)).

<sup>32</sup> Alan Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Aid* 6 (2013), <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Securing-Equal-Justice-for-All-2013-Revision.pdf>.

<sup>33</sup> McCaffrey, *supra* note 20 at 82.

<sup>34</sup> Legal Serv. Corp. Act, Pub. L. No. 93-355, 88 Stat. 378 (1974) (codified as amended at 42 U.S.C.A. § 2996 (1977)).

Southern Minnesota Regional Legal Services.<sup>35</sup> Through these new regional offices, Minnesota was better equipped to provide more legal services to increase access to justice in all 87 counties.

As federal debates about the existence of the Legal Services Corporation raged under the Reagan Administration in the eighties,<sup>36</sup> Minnesota continued to dedicate time and resources to legal services to increase access to justice. In 1981, the Minnesota State Bar Association (MSBA) was one of the first to hire a staff attorney to ensure equal justice by addressing increased access to legal services in Minnesota.<sup>37</sup> As a result of hiring someone to address these issues, Minnesota saw developments such as a comprehensive Interest on Lawyers Trust Account (IOLTA) program,<sup>38</sup> increased volunteer programs in all 87 counties, and establishment of another nonprofit to secure grant funding.<sup>39</sup> The MSBA continued to offer accessible continuing legal education (CLE) courses and to make legal volunteering easier for attorneys.

While these new victories were a tremendous benefit, legal assistance must be paired with policy change to ensure its success. The 1990s saw cuts in funding for legal services from the Minnesota Legislature and the Legal Services Corporation. The MSBA formed the Legal Assistance to the Disadvantaged Committee (hereinafter LAD Committee) to study elements of legal service delivery to improve access through innovation of legal services to low-income people. In 1990, the LAD Committee examined the role of mandatory pro bono and provided

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<sup>35</sup> McCaffrey, *supra* note 20 at 84.

<sup>36</sup> See Angela F. Turner, *President Reagan and the Legal Services Corporation*, 15 Creighton L. Rev. 711 (1981), [http://dspace.creighton.edu:8080/xmlui/bitstream/handle/10504/39355/49\\_15CreightonLRev711\(1981-1982\).pdf?sequence=1](http://dspace.creighton.edu:8080/xmlui/bitstream/handle/10504/39355/49_15CreightonLRev711(1981-1982).pdf?sequence=1) (explores former President Reagan's history with legal services and evaluates his policy stances).

<sup>37</sup> McCaffrey, *supra* note 20 at 88.

<sup>38</sup> See Minn. R. of Prof'l. Cond. 1.15 (establishes IOLTA in Minnesota).

<sup>39</sup> McCaffrey, *supra* note 20 at 88.



recommendations for pro bono activities.<sup>40</sup> The LAD Committee continued to advocate for policies and programs to be adopted by the MSBA. This included recognizing public interest work of Minnesota law students and bar members and implementing policies and procedures to increase participation in pro bono by revisiting Rules of Professional Conduct 6.1.<sup>41</sup> The written record does not indicate substantive changes beyond the report of recommendations.

Tangentially related to paralegal licensure, there was a previous attempt in Minnesota to diversify legal service delivery by licensing specialized legal assistants.<sup>42</sup> In 1991, Senate Bill 520 requested the Supreme Court to permit “the delivery of legal services by a specialized legal assistant in accordance with a specialty license.”<sup>43</sup> The bill was amended before being signed into law, and the Legislature determined that the Supreme Court should appoint a committee to conduct a feasibility study pertaining to specialized legal assistants.<sup>44</sup> The Supreme Court’s committee submitted the feasibility study in 1994, concluding that licensing legal assistants would be costly, and only be worthwhile if it significantly reduced the cost of legal services.<sup>45</sup> Based on the committee’s recommendations, the Supreme Court did not move forth on the matter.

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<sup>40</sup> McCaffrey, *supra* note 20 at 89.

<sup>41</sup> See Lisa Schwartz Tudzin, *Pro Bono Work: Should It Be Mandatory or Voluntary?*, 12 J. Legal Prof. 103 (1987), [https://www.law.ua.edu/pubs/jlp\\_files/issues\\_files/vol12/vol12art06.pdf](https://www.law.ua.edu/pubs/jlp_files/issues_files/vol12/vol12art06.pdf) (evaluates whether *pro bono* should be mandatory or not)

<sup>42</sup> Lou Don Bishop, *Definition, Regulation, and Licensure of Paralegals in the United States* 172 (2002), <https://vtechworks.lib.vt.edu/bitstream/handle/10919/11179/Dissertation.pdf?sequence=1&isAllowed=y> 172.

<sup>43</sup> 1991 Minn. Sess. Law Serv. 2091. <https://www.revisor.mn.gov/laws/1991/0/Session+Law/Chapter/299/pdf/>.

<sup>44</sup> *Id.*

<sup>45</sup> Bishop, *supra* note 42 at 173 (quoting Dover 2002).

Beyond the bench, legislators, and the bar, Minnesota legal educators created an innovative legal education model to promote access to justice. In 1993, the LAD Committee formed a working group called the Law School Initiatives (LSI) to discuss a plan to increase the role of legal education in producing public servants. The LSI hosted the 1994 Symposium on Legal Education and Pro Bono to discuss lawyers' obligations to provide public service legal assistance.<sup>46</sup> The LSI helped the three Minnesota law schools at the time (the University of Minnesota School of Law, Hamline University School of Law, and William Mitchell College of Law) design a public service program. Each school had the responsibility to implement a program.<sup>47</sup>

The Minnesota Justice Foundation was created from a model inspired by the University of Minnesota.<sup>48</sup> The University of Minnesota students who founded it believed that “lawyers and law students have a special professional obligation to provide quality legal services to those who cannot afford legal representation.”<sup>49</sup> As the organization developed, the Minnesota Justice Foundation continued to strive for justice by creating opportunities for law students to perform public interest and pro bono legal services. The law schools continue to collaborate through the Minnesota Justice Foundation to ensure all law students in Minnesota can be involved in augmenting access to justice.<sup>50</sup>

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<sup>46</sup> Susan J. Curry, *Meeting the Need: Minnesota's Collaborative Model to Deliver Law Student Public Service*, U. Chi. Fac. Scholarship 347 (2001), [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2126&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2126&context=journal_articles).

<sup>47</sup> *Id.* at 353.

<sup>48</sup> *Id.*

<sup>49</sup> Minn. Just. Found., *Our History* (last visited Feb. 17, 2019), <https://www.mnjustice.org/about-mjf/history/>.

<sup>50</sup> Minn. Just. Found., *Our History* (last visited Feb. 17, 2019), <https://www.mnjustice.org/about-mjf/history/>. Following the merger of William Mitchell College of Law and Hamline University School of Law in 2015, the

In the 20th century, conversations about equal justice in Minnesota pertained mostly to legal service delivery and volunteerism. While there was great work for the community at the time, the justice gap persists. At the change of the century, advocates at the MSBA recognized that increasing access to justice might require a new conversation instead of revisiting the same solutions.

### *Minnesota's Access to Justice Movement in the 21st Century*

More recently, dedicated members of the legal community continued discussing the development of legal services to increase access to justice in Minnesota. The following is not an exhaustive list of all reports conducted by the MSBA or the Judiciary, but describes instances that are both substantive and relevant to improving access to justice and innovating legal service delivery.

In 2003, then-President of the MSBA James Baillie issued a “Call to Honor,” asking attorneys to donate their time to pro bono and “make a difference.”<sup>51</sup> Under this program, there were 650 new attorneys who took on cases serving more than 5,600 pro bono clients.<sup>52</sup> Many considered this program to be an unqualified success and wanted to study more ways for pro bono efforts to serve clients. In 2007, the MSBA released its first “Report on Pro Bono” which would thereafter become a biannual publication reviewing the status of pro bono activities and professional development opportunities. The LAD Committee recommended that the Minnesota

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Minnesota Justice Foundation maintains a partnership with Hamline University to connect undergraduate and paralegal students with volunteer opportunities.

<sup>51</sup> Minn. St. B. Ass'n, *Report on Pro Bono Legal Service*, 4 (2009), <https://mn.gov/law-library-stat/archive/urlarchive/c1811206-1.pdf>.

<sup>52</sup> *Id.*

Supreme Court should alter CLE rules to allow for pro bono to count as a limited amount of CLE credit and created a model pro bono policy for government lawyers.<sup>53</sup> But even with all of these developments, encouraging volunteerism in the legal profession and encouraging the legal academy to follow suit was not enough to meet existing need.

In the early 21st century, one aspiration for access to justice in Minnesota was the concept of “Civil Gideon,” or extending the right to counsel to indigent persons for civil issues in the same way it exists in the criminal justice system.<sup>54</sup> Both the Minnesota Supreme Court and the MSBA charged task forces to study the Civil Gideon. In 2001, the State Court Task Force was formed to critically examine the potential for a Civil Gideon in Minnesota. The charge for the Task Force was to study and provide recommendations for a right to court-appointed civil counsel.<sup>55</sup> The Task Force’s recommendations were to:

- ❖ establish uniform standards,
- ❖ provide court representation for indigent paternity and civil contempt cases, and
- ❖ expand the existing public defender system to serve in juvenile protection cases.

The Task Force failed to reach consensus on funding or how the program would be administered. Several years later, the MSBA created the Civil Gideon Task Force to again assess the implementation of the program in Minnesota. The Task Force found that due to recent economic hardships, low-income Minnesotans needed legal assistance, and that planning for

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<sup>53</sup> *Id.* at 6.

<sup>54</sup> See generally *Gideon v. Wainwright*, *supra* note 29.

<sup>55</sup> Perry Wilson, *Right to Civil Counsel in Minnesota* (2013), <https://bit.ly/2UbPXcw>.

implementation should continue despite continuing state deficits.<sup>56</sup> The Task Force recommended: studying further the specific legal should be addressed; evaluating service providers in Minnesota; identifying strategic planning for expansion and resources; and building upon current alternatives.<sup>57</sup> Ultimately, the report identified avenues for Minnesota to pursue. Following the report, the conversations about extending the public defender system to civil issues seemed to dissipate in Minnesota from the judiciary and the MSBA.

After the Task Force's conclusion, the access to justice crisis in Minnesota remained. In 2010, census estimates revealed that 806,575 people were either at or below the 125% poverty line.<sup>58</sup> Conversations continued about the economic impact of legal aid and the existing barriers to resolving civil legal issues.<sup>59</sup> The Minnesota Judiciary aspired to continue Minnesota's dedication to equal justice and take a more active role. In 2017, it debuted the Justice for All Strategic Plan, which discussed the future of Minnesota courts.<sup>60</sup> The first priority of the strategic plan was access to justice.<sup>61</sup> According to the strategic plan, the primary way the courts wanted

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<sup>56</sup> Minn. St. B. Ass'n Civ. Gideon Task Force, *Access to Justice: Assessing Implementation of Civil Gideon in Minnesota*, 9 (2011), <https://bit.ly/2U4YzBt>.

<sup>57</sup> *Id.* at 10.

<sup>58</sup> Minn. Dept. of Health, *Population Characteristics Query: Poverty and Income* (last visited Nov. 20, 2018), [https://data.web.health.state.mn.us/population\\_query](https://data.web.health.state.mn.us/population_query). (Census estimates show 611,354 Minnesotans at or below 100 percent of poverty level in 2014).

<sup>59</sup> See Minn. Legal Serv., *Economic Impact Measurements of Minnesota Legal Aid* (2014), [http://mylegalaid.org/downloads/Economic\\_Impact\\_Report.pdf](http://mylegalaid.org/downloads/Economic_Impact_Report.pdf) (discussing the economic impact of Minnesota legal aid). See also Hannah Lieberman, *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Aid Problems* (Sep. 2011), [http://www.mncourts.gov/Documents/0/Public/administration/Final\\_MN-CABS\\_Study\\_September\\_2011.pdf](http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf) (a study of the nature of unmet legal needs in Minnesota, and who it impacts).

<sup>60</sup> Minn. Jud. Council, *Focus on the Future: Priorities and Strategies for Minnesota's Judicial Branch* (2018), [http://mncourts.gov/mncourtsgov/media/scao\\_library/MJB-Strategic-Plan.pdf](http://mncourts.gov/mncourtsgov/media/scao_library/MJB-Strategic-Plan.pdf).

<sup>61</sup> *Id.*

to mitigate the justice gap was to modernize service delivery models in the context of limited state resources, demographics, and business changes, in order to provide vulnerable populations with legal services.<sup>62</sup> To achieve these aspirations, the Minnesota Judiciary plans to continue using technological developments as a means of increasing access to justice by using kiosks in court buildings, expanding eCourt-MN, and simplifying forms.<sup>63</sup> Any development to improve understanding of legal procedure is crucial, but these policies must be paired with other alternatives for more robust solutions.

*The 2017 MSBA Alternative Legal Models Task Force Report*

To summarize the last 119 years, Minnesota has consistently pursued and continues to rebrand the same solution of encouraging volunteerism and utilizing of civil legal aid. As discussed, there is a long and beneficial history of championing legal aid and volunteerism in Minnesota. However, if Minnesota wants more progress bridging the justice gap, the legal profession should think beyond these solutions and pursue more innovation in the delivery of legal services. The recent work of the MSBA Alternative Legal Models Task Force was an important step in the right direction following the Supreme Court's feasibility study on legal assistants in 1994.

The MSBA Alternative Legal Models Task force addressed the role of paraprofessionals and how they could be introduced in Minnesota.<sup>64</sup> Specifically, the Task Force examined

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<sup>62</sup> *Id.* at 6.

<sup>63</sup> *Id.* at 8.

<sup>64</sup> The MSBA Alternative Legal Models Task Force was itself formed as a result of work done by yet another Task Force, the MSBA Future of Legal Education Task Force. The Future of Legal Education Task Force examined how to make pursuing legal careers more affordable, considering the skyrocketing costs of legal education. The Legal

Washington State’s new Limited Licensed Legal Technician (L.L.L.T.) program and similar alternative legal models in other jurisdictions to create and submit a model rule to present to the Supreme Court for adoption.<sup>65</sup> Their charge was to “examine the advisability of supplementing traditional lawyer representation through the creation of a new type of limited-scope certified legal assistance provider to increase access to justice for those who cannot afford a lawyer.”<sup>66</sup>

In order to organize its work, the Task Force identified three primary arenas in which licensing paraprofessionals might be beneficial and created three subcommittees to address each one: the Form Completion Committee, which explored how paraprofessionals could help assist with preparing forms to benefit the court;<sup>67</sup> the Washington Model Committee, which examined the Washington State Limited License Legal Technician model;<sup>68</sup> and the Business Models Committee, which explored sustainable business models to meet the needs of people with modest income.<sup>69</sup> The Business Models Committee investigated the British Columbia Model, which authorized “designated paralegals” to perform tasks not previously permitted without an

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Education Task Force’s final report recommended further exploration of alternative pathways into the legal profession.

<sup>65</sup> Minn. St. B. Ass’n Alternative Legal Models Task Force, *Reports and Recommendations*, 2 (2017), <https://www.mnbar.org/docs/default-source/policy/alm-task-force-report-and-recommendations-final.pdf?sfvrsn=0>.

<sup>66</sup> Minn. St. B. Ass’n, *Alternative Legal Models Task Force: Purpose* (last visited Nov. 2018) <https://www.mnbar.org/members/committees-sections/msba-committees/alternative-legal-models-task-force#.W53bXZNKi9Z>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

attorney's supervision. These tasks included giving legal advice to clients and representing clients before a court or tribunal (administrative court) as permitted by the court or tribunal.<sup>70</sup>

Ultimately, the Task Force recommended that the MSBA should:

refine a proposal to be submitted to the Minnesota Supreme Court for the creation of an LLLT-type practitioner or a Legal Practitioner model based on the British Columbia model to expand access to legal assistance,<sup>71</sup> particularly to low and modest income clients across the state with a focus in rural areas.

The Task Force acknowledged the concerns of this model and set some parameters for education requirements, testing and licensing requirements, independent practitioners, legal advice and practice areas, and court appearances. Finally, the Task Force concluded that the MSBA should recommend one of the rules to the Minnesota Legislature and Supreme Court. According to the Task Force, the failure to act would be detrimental to those seeking legal assistance.<sup>72</sup> When the recommendations were put forward, the Task Force was not able to secure consensus from the general assembly, and the recommendations were dismissed. Despite MSBA dismissal, the great work accomplished through the Task Force remains a platform from which Minnesota could continue to build a bridge to access to justice by leveraging paraprofessional support.<sup>73</sup>

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<sup>70</sup> *Id.* at 8. See also The L. Soc'y of B.C., *Paralegals* (last visited Nov. 17, 2018), <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/paralegals> (further information and regulations on the Designated Paralegal Model of British Columbia).

<sup>71</sup> *Id.* at 15.

<sup>72</sup> *Id.* at 17.

<sup>73</sup> For this idea to be successful, it has to have the power of the bench and bar behind it. Diversifying legal service delivery models requires the political capital of both to get the buy in from the legal community.



## Part II: A National Survey of Paraprofessionals Practicing Law

Paralegals possess a breadth and depth of knowledge that they can offer the legal profession and the public. Minnesota should reconsider pilot programs and model policies of paralegals providing independent legal services. The names and regulatory structures of these pilot programs and models vary, but the overall theme is allowing paralegals to perform substantive legal duties beyond the conventions of traditional paralegal roles. This section will provide an overview of two licensure programs and one innovative volunteer program that currently serves to help bridge the justice gap.

According to the ABA, paralegals are professionals who are “qualified by education, training or work experience” to perform “specifically delegated substantive legal work for which a lawyer is responsible.”<sup>74</sup> Paralegals have formal education, substantive legal training, and relevant work experience. However, they are not licensed to practice law.

The legal profession includes only one path that allows the practice of law. This privilege is granted by obtaining a Juris Doctor degree and passing the bar. Other legal professionals, including paralegals and legal assistants,<sup>75</sup> do not have the same recognition from the public compared to lawyers and do not have the ability to practice law.<sup>76</sup> The new and emerging legal service models across the country give different names to a new class of legal practitioner (limited practitioners, limited license technicians, legal assistants, legal document officers, etc.).

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<sup>74</sup> Am. B. Ass’n, *Current ABA Definition of Legal Assistant/Paralegal* (last visited Nov. 17, 2018), [https://www.americanbar.org/groups/paralegals/profession-information/current\\_aba\\_definition\\_of\\_legal\\_assistant\\_paralegal/](https://www.americanbar.org/groups/paralegals/profession-information/current_aba_definition_of_legal_assistant_paralegal/).

<sup>75</sup> Nat’l Ass’n of Legal Assistants, *Paralegal or Legal Assistant?* (last visited Dec. 7, 2018), <https://www.nala.org/node/1091> (explains how paralegals and legal assistants are synonymous).

<sup>76</sup> In fairness to the bar, this is because there is no other licensed group of practitioners - at the end of the day the supervisory function rests entirely on the lawyer.

Based on the fundamental elements of the new class of practitioner, all of these titles are paralegals with enhanced privileges.

The original impetus for establishing the paralegal profession was to meet the legal needs of the public.<sup>77</sup> In the 1960s, the career path was created as a strategy to increase the delivery of legal services.<sup>78</sup> By 1967, the American Bar Association (ABA) had endorsed the paralegal profession and established the Standing Committee of Legal Assistants (renamed to the Standing Committee on Paralegals in 2003).<sup>79</sup> However, under unauthorized practice of law rules,

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<sup>77</sup> Therese A. Cannon, *Ethics and Professional Responsibility for Paralegals*, 16 (Deborah E. Bouchoux et al. eds., 7th ed. 2014).

<sup>78</sup> Nat'l Ass'n of Legal Assistants, About (last visited Nov. 17, 2018) <https://www.nala.org/about-nala> .

<sup>79</sup> Am. B. Ass'n Standing Committee on Paralegals, *ABA Model Guidelines for the Utilization of Paralegal Services*, 1 (2018), [https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls\\_prlgs\\_Modelguidelines.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_Modelguidelines.authcheckdam.pdf).

paralegals were, and continue to be, unable to practice law independently in most jurisdictions.<sup>80</sup>

Paralegals must adhere to ethical guidelines.<sup>81</sup>

The first paralegals were employed mostly in legal aid organizations and small law firms, but the growth of the profession in the 1980s resulted in large private firms having the capacity to employ more paralegals cost effectively.<sup>82</sup> The reality of the profession altered, and it became

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<sup>80</sup> In the text of the ABA Model Rules of Professional Conduct, Rule 5.5 defines what the unauthorized practice of law is. Am. B. Ass'n Model R. of Prof'l Cond. 5.5. This rule pertains to who is authorized to practice law to provide legal services. Most states have adopted the ABA Model Rules, and some have even criminalized the unauthorized practice of law. Am. B. Ass'n., *State Adoption of the ABA Model Rules of Professional Conduct and Comments* (May 23, 2011), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/pic\\_migrated/comments.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pic_migrated/comments.authcheckdam.pdf). Even among jurisdictions, there is a variety of definitions of the practice of law. Am. B. Ass'n. *State Definitions of the Practice of Law* (last visited Nov. 20, 2018), [https://web.archive.org/web/20160114222449/https://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model\\_def\\_statutes.authcheckdam.pdf](https://web.archive.org/web/20160114222449/https://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf). The challenge is that there is confusion over what constitutes the practice of law. Some interpretations have been vague. For example, a Minnesota Supreme Court justice described the practice of law as “what lawyers do.” *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864, 867 (Minn. 1988). Broad interpretations of the practice of law create confusion between lawyers and other professions that arguably practice law, such as accountants, real estate agents, and paralegals. Some legal scholars believe that practice of law rules perpetuate the monopolization lawyers have on providing legal services of lawyers over the legal profession. See Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 *Fordham L. Rev.* 2581 (1999) (“Particularly in this century, the nexus between required bar admission and the states' proscription of UPL has created a ‘lawyer monopoly’ over a great deal of activity outside of the courts, which are the traditional domain of lawyering.”); Zachary C. Zurek, *The Limited Power of the Bar to Protect Its Monopoly*, 3 *St. Mary's J. Legal Mal. & Ethics* 242, 279 (2013) (“The bar's ability to protect its monopoly is diminishing, and in some cases, it is best for the public.”). Ultimately, the practice of law presents many challenges in respect to licensing paralegals.

<sup>81</sup> The goal of the ABA Model Rules on the Utilization of Paralegals was to ensure that there were no ethical violations by paralegals in the areas of the practice of law, confidentiality, conflict of interest, or financial arrangements between lawyers and paralegals. Am. B. Ass'n., *ABA Model Guidelines for the Utilization of Paralegal Services* (2012), <https://bit.ly/2EaSJtJ>. The National Association for Legal Assistants also has model standard ethical guidelines for paralegals. Nat'l Ass'n of Legal Assistants, *Model Standards and Guidelines for Utilization of Paralegals* (2016), <https://www.nala.org/sites/default/files/modelstandards.pdf>. The ABA Model Rules of Professional Conduct were implemented in 49 state jurisdictions with the exception of California. The Rules of Professional Conduct govern the conduct of legal professionals. Rule 5.3 of the Rules of Professional Conduct governs the relationship between “nonlawyers” and attorneys in professional contexts. Since paralegals are not required to be members of a bar association or its equivalent in state jurisdictions, attorneys bear the responsibility for paralegal conduct due to vicarious liability. While any employee who is not a licensed attorney bears responsibility for professional conduct, paralegals have a special relationship with these rules since they are often working with confidential information and correspond with prospective and current clients. However, rules regarding the unauthorized practice of law should not defeat the limited licensure of paralegals.

<sup>82</sup> Cannon, *supra* 77 at 17.

more of a means to decrease the costs of legal assistance in large firms. This overlooked history illustrates how experienced paralegals should be utilized to help bridge the gap.

### *Models of Paralegal Licensure*

Some jurisdictions are introducing new practice rules that authorize paralegals to practice law independently. While the implementation of these rules is relatively new, the resulting conversation across the nation has been quite exciting as more jurisdictions introduce rules. These programs create opportunities for paralegals to have more professional autonomy and meaningful ways to serve the public independently. The models can be grouped into three broad types: Legal document preparers, court navigators, and limited licensed legal technicians.

#### Legal Document Preparers

Traditionally, paralegals have assisted in the preparation of the forms, but they do not do this independently, in keeping with unauthorized practice laws. With proper education and work experience, paralegals are well equipped to fill out forms and help guide clients through legal issues.

Many form-based legal areas such as real estate, family law, and housing are challenging to navigate without representation or knowledgeable legal assistance. California was the first state to introduce independently licensed paraprofessionals to prepare legal documents. In 2000, California authorized the licensure of Legal Document Assistants who work with pro se litigants to prepare legal forms and assist with navigating the intricacies of legal processes.<sup>83</sup> Legal

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<sup>83</sup> 2002, Cal. Bus. & Prof. Code. § 6400. *See* Sacramento County Public Library, *Legal Document Assistants: Common Questions* (last visited Nov. 17, 2018), <https://saclaw.org/articles/legal-document-assistants-edl/>.

Document Assistants in California are distinct from paralegals and legal assistants because they are not supervised by attorneys and are responsible for their own work product. In addition, they must comply with other requirements established by California Business and Professions Code §§6400-6415 by “complet[ing] a required legal education,<sup>84</sup> maintain[ing] a \$25,000 bond,<sup>85</sup> and registering with the county they intend to work in.”<sup>86</sup> In addition, Legal Document Assistants must have a valid contract with each person they assist.<sup>87</sup> The California Association of Legal Document Assistants is the primary association of Legal Document Assistants in California.<sup>88</sup> Legal Document Assistants must make their status known as a “nonlawyer.” Legal Document Assistants must disclose their status, advertise in a specific manner, and have a registration card which the public can ask to see.<sup>89</sup> Finally, although Legal Document Assistants can substantially assist with forms under the request of the client, they cannot advise on strategy or give opinions on outcomes.<sup>90</sup>

Similarly in Arizona, the Supreme Court of Arizona adopted §7-208 of the Arizona Code of Judicial Administration in 2003, which authorized Legal Document Preparers in Arizona.<sup>91</sup> The authorized functions of the Legal Document Preparers are similar to California’s Legal

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<sup>84</sup> 2002, Cal. Bus. & Prof. Code. § 6402.1.

<sup>85</sup> 2002, Cal. Bus. & Prof. Code. § 6405.

<sup>86</sup> 2002, Cal. Bus. & Prof. Code. § 6404.

<sup>87</sup> 2002, Cal. Bus. & Prof. Code. § 3950.

<sup>88</sup> Cal. Ass’n of Legal Document Assistants, *Who We Are* (last visited Dec. 30, 2018), <https://www.calda.org/who-we-are>.

<sup>89</sup> *See* 2002, Cal. Bus. & Prof. Code. § 6407, 2002; Cal. Bus. & Prof. Code. §6408.

<sup>90</sup> 2002, Cal. Bus. & Prof. Code. 6411.

<sup>91</sup> *See* Ariz. Code. of Jud. Admin. § 7-203; A.R.S. Sup. Ct. R. 31.

Document Assistants, where they can prepare and provide legal documents without legal supervision for pro se litigants, but cannot provide legal advice, opinions, or recommendations and cannot have attorney-client privilege. In addition, they must have proper education and work experience,<sup>92</sup> must carry an identification number to make available to the public,<sup>93</sup> and must pay the certification and registration fees.<sup>94</sup> Distinct from the California model, Legal Document Preparers in Arizona do not need to register in a specific county, and they must complete continuing education requirements.<sup>95</sup> There is a dual-regulatory scheme that supervises the Legal Document Preparers, which includes the Arizona Supreme Court and the nominated Board of Legal Document Preparers.<sup>96</sup> The program is funded through court apportionment and fees.<sup>97</sup>

Overall, the goals of licensing legal document preparers/assistants are not only to inhibit the unauthorized practice of law but also to meet the need of legal services. By authorizing paraprofessionals to undertake document preparation, these alternative programs give unrepresented people a resource to assist with the intricacies of court forms. However, the limitations on document preparers render them incapable of providing legal advice or doing anything substantive beyond identifying the forms. They are under direction of the client and do not have consulting capabilities. Despite the limitations, these adaptations to the unauthorized

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<sup>92</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. E(3)(b)(6).

<sup>93</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. F(3).

<sup>94</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. D(2).

<sup>95</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. G(2).

<sup>96</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. D(4).

<sup>97</sup> Ariz. Code. of Jud. Admin. § 7-203, subd. D(2).

practice of law rule and certification add validity to the paralegal profession and grant more professional opportunities for paralegals. Document Assistants provide essential guidance to members of the public who are struggling to prepare forms that are vital to civil procedure.

## Court Navigators

Another model is the “Court Navigator” model. While this model does not license paraprofessionals, it is a unique volunteer program that demonstrates the value of “non-lawyers.” In most cases, legal professionals who are not licensed cannot appear in court proceedings. Due to the shortage of legal help for low-and middle-income populations, tremendous disparities ensue. In 2015, the New York Judiciary found that 1.8 million people annually go through housing court unrepresented.<sup>98</sup> In 2016, approximately 90 percent of tenants facing eviction in New York City did not have a lawyer, while a large majority of landlords did.<sup>99</sup> Furthermore, the National Center for State Courts found that in urban counties, one party is unrepresented while the other has representation in 70 percent of nondomestic civil cases.<sup>100</sup>

While New York City did not license paralegals to represent pro se litigants in court, they introduced the Court Navigators Program.<sup>101</sup> The Court Navigators Program is a volunteer

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<sup>98</sup> N.Y. St. Cts. Access to Just. Program, *Report to the Chief Judge and the Chief Administrative Judge of the State of New York*, 3 (2015), [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2015report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2015report.pdf).

<sup>99</sup> Off. of the Deputy of Chief Admin. Judge for Just. Initiatives, *The Results of Two Surveys: Self-Represented Litigants in the New York City Family Court and New York City Housing Court*, 1 (2005), [http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/AJJI\\_SelfRep06.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/AJJI_SelfRep06.pdf).

<sup>100</sup> Nat'l Ctr for St. Cts., *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, iv (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

<sup>101</sup> Chief Admin. Judge of the Cts., *Administrative Order for the Court Navigators Program* (2014), <https://www.nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf>.

opportunity for people to support and assist pro se litigants in landlord-tenant and debt collection cases.<sup>102</sup> In this capacity, Court Navigators:

provide general information, written materials, . . . one-on-one assistance to eligible unrepresented litigants[,] . . . [offer] moral support to litigants, help them access and complete court forms, assist them with keeping paperwork in order, in accessing interpreters and other services, explain what to expect, and [identify] the roles of each person is in the courtroom.<sup>103</sup>

Court Navigators cannot address the court on their own, but they can respond to factual inquiries from the judge.<sup>104</sup>

The Court Navigators must commit to 30 hours of volunteering, attend a three hour training, and register with the Court Navigator program through the Civil Court of the City of New York courthouses. Due to a large number of the volunteers being undergraduate students, the Courts are flexible with how the 30 hours are divided up to accommodate student schedules. Volunteers are also given a manual to supplement the training. Each of the designated courts in New York City has a Court Navigator Coordinator who is responsible for answering questions of the navigators.<sup>105</sup> Overall, this program uses volunteer non-lawyers to apply their legal knowledge to support low-and middle-income people in housing court.

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<sup>102</sup> Rebecca L. Sandefur & Thomas M. Clarke, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects*, 3 (Dec. 2016), [http://www.americanbarfoundation.org/uploads/cms/documents/new\\_york\\_city\\_court\\_navigators\\_report\\_final\\_with\\_final\\_links\\_december\\_2016.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf).

<sup>103</sup> N.Y. St. Unified Ct. System, *New York City Court: Volunteer Opportunities*, <https://www.nycourts.gov/courts/nyc/housing/rap.shtml> (last visited Nov. 17, 2018).

<sup>104</sup> *Id.*

<sup>105</sup> Kathleen Maitland, *The Court Navigator Program: Non-Attorney Assistance Within New York State Courts*, 3 (2017), <http://massappleseed.org/wp-content/uploads/2017/12/The-Court-Navigator-Program.pdf>.



Two years following the establishment of the program, the ABA, the National Center for State Courts, and the Public Welfare Foundation partnered to evaluate the New York City Court Navigator program.<sup>106</sup> The evaluation found that the program positively influenced the lives of unrepresented people in New York City’s Civil Courts. When case files of assisted litigants were reviewed, it was found that assisted litigants were 87 percent more likely to have their defenses recognized and addressed by the court than unassisted tenants.<sup>107</sup> In Navigator-assisted cases, judges ordered landlords more often to make needed repairs by 50 percent.<sup>108</sup> The full report included a variety of recommendations to improve the Navigator in the long-term, including:

- ❖ educating attorneys and judges about the program;
- ❖ developing a referral process for additional assistance; and
- ❖ determining methods to increase the amount of navigators.<sup>109</sup>

Ultimately, the report concluded on an important point: “people without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.”<sup>110</sup>

The New York program does not emphasize the role of paraprofessionals in the legal sphere. It is not a licensure program. However, it is an important program to highlight because it recognizes the value of nonlawyers working to address the justice gap. With trained paralegals,

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<sup>106</sup> Sandefur & Clarke, *supra* note 102.

<sup>107</sup> *Id.* at 4.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 7.

<sup>110</sup> *Id.*

the program could be replicated in a robust manner, which would continue to improve outcomes for unrepresented people in court systems across the country.

### Limited Licensed Legal Technicians

A study by the Washington State Supreme Court identified entrenched disparities in access to legal services in the state. The study's findings were the impetus of the Limited Licensed Legal Technician model. In 2003, Washington State conducted its first study of civil legal issues to measure the legal needs of low and middle income people.<sup>111</sup> The study documented the crisis of access to justice within in the state of Washington. The findings came from three separate surveys: 1) an in-depth survey of low-income individuals and the types of legal needs they encounter, 2) a telephone survey of 800 randomly selected low- and middle-income people, and 3) an anecdotal survey of stakeholders (bench and bar, court clerks, social service providers) to learn their perceptions of the state of civil legal assistance in Washington.<sup>112</sup> The study found that about 87 percent of all low-income households experience one civil legal problem annually, resulting in more than one million legal problems annually.<sup>113</sup> When trying to navigate their legal issues, 85 percent of low-income people do this without any help from an attorney.<sup>114</sup> Most of the legal problems that Washington residents identified were basic human needs: housing, family security, and public safety.<sup>115</sup> From these low- and

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<sup>111</sup> Task Force on Civ. Equal Just. Funding, *The Washington State Civil Legal Needs Study (2003)*, <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.

<sup>112</sup> *Id.* at 9-10.

<sup>113</sup> *Id.* at 24.

<sup>114</sup> *Id.* at 25.

<sup>115</sup> *Id.* at 33.

middle-income populations, women, children, and racial minorities were more likely to have civil legal issues.<sup>116</sup> In light of these findings, the Washington State legal community did not idly accept these realities but took proactive measures.

As a result of these disparities, the state of Washington took significant action to fortify legal services capacity by licensing paraprofessionals to provide legal advice. The Washington State Bar Association (WSBA) Practice of Law Board proposed the Limited License Legal Technician (LLLT) rule.<sup>117</sup> The rule was met with skepticism from the legal community.<sup>118</sup> The proposed rule was denied multiple times in 2006, 2008, and 2009, before the Washington Supreme Court adopted Admission and Practice Rule 28 in 2012.<sup>119</sup> While some of these negative perceptions persist, members of the legal community have lauded the LLLT rule since its adoption.<sup>120</sup> The initial practice area with respect to which paralegals were licensed to practice was family law, which was approved by the court in 2013, and new practice areas in consumer money and debt law were examined in 2018.<sup>121</sup>

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<sup>116</sup> *Id.* at 29.

<sup>117</sup> Wash. St. Sup. Ct. Admission to Prac. R. 28, [https://www.wsba.org/docs/default-source/licensing/lllt/apr-28.pdf?sfvrsn=b563ef1\\_0](https://www.wsba.org/docs/default-source/licensing/lllt/apr-28.pdf?sfvrsn=b563ef1_0).

<sup>118</sup> See, e.g., Julian Aprile, *Limited License Legal Technicians: Non-lawyers Get Access to the Legal Profession, But Clients Won't Get Access to Justice*, 40 Seattle U. L. R. 217 (2016), <https://tinyurl.com/y6lw32v2> (provides an overview of how LLLT's are not a good solution due to their limited scope in the author's opinion). See also Washington State Bar Association, *Limited License Practitioner Town Hall - February 23, 2012*, (Feb. 28, 2012), <https://www.youtube.com/watch?v=cMykqP0DKgU>.

<sup>119</sup> Wash. St. Sup. Ct., *supra* note 117.

<sup>120</sup> See Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 Miss. L. J. Supra 75 (2013).

<sup>121</sup> Sean Crossland & Paula Littlewood, *Limited Legal Technician Program: The History and Future of the Program* (2016), <https://bit.ly/2Q6cSYu>.

Under the scope of Washington State’s Rule 28, LLLTs are drastically different compared to the previously discussed Court Navigators and Document Preparation Assistants. Their training is much more extensive, and their independence is much greater. LLLTs must have substantive legal training with a specific curriculum,<sup>122</sup> complete 3,000 hours of supervised work,<sup>123</sup> take an examination,<sup>124</sup> participate in continuing legal education courses,<sup>125</sup> and adhere to the procedures set out in Rule 28. LLLTs are regulated by the LLLT Board, which recommends new practice area to the Supreme Court,<sup>126</sup> processes applications and fees,<sup>127</sup> administers LLLT examinations,<sup>128</sup> controls the curriculum for LLLTs,<sup>129</sup> provides continuing legal education,<sup>130</sup> and establishes the rules of ethical conduct and disciplinary proceedings.<sup>131</sup>

The new rule provides legal paraprofessionals the most opportunity of any alternative model. Under the Scope of Rule 28, LLLTs can:

- ❖ Inform clients of procedures and course of legal proceedings
- ❖ Provide approved and lawyer-prepared self-help materials

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<sup>122</sup> *Id.* at 12.

<sup>123</sup> *Id.* at 4.

<sup>124</sup> *Id.* at 4.

<sup>125</sup> *Id.* at 7.

<sup>126</sup> *Id.* at 2.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* See Wash. Sup. Ct., *Limited License Legal Technician: Rules of Professional Conduct*, [https://www.wsba.org/docs/default-source/licensing/lllt/rule---lllt-rpc-2015-02-03.pdf?sfvrsn=f0a13cf1\\_3](https://www.wsba.org/docs/default-source/licensing/lllt/rule---lllt-rpc-2015-02-03.pdf?sfvrsn=f0a13cf1_3).

- ❖ Review documents and exhibits from the opposing party and explain them
- ❖ Select, complete, file, and serve approved and lawyer prepared forms and advise of their relevance
- ❖ Advise clients of necessary documents and explain their relevance
- ❖ Assist client in obtaining necessary documents.<sup>132</sup>

LLLTs do have greater professional autonomy than all of the paraprofessionals under other programs implemented in the country. While LLLTs cannot represent clients in court or administrative hearings, negotiate their client’s rights, or communicate with other parties on their client’s position, they still are able to assist the public at a lower cost.<sup>133</sup> LLLTs do not require lawyer supervision and can even open their own practice and advertise their services.<sup>134</sup> Ultimately, LLLTs can assist with legal forms and inform clients of legal procedures to improve outcomes.

In 2017, the LLLT program was evaluated by the National Center for State Courts and the ABA to evaluate this innovative program that expanded the provision of legal services.<sup>135</sup> The two bodies found that the program was appropriately designed to assist low- and middle-income people with their legal needs without an attorney.<sup>136</sup> Following an evaluation, the National Center for State Courts and the ABA released a report covering some of the initial

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<sup>132</sup> Wash. St. Sup. Ct. Admission to Prac. R. 28, *supra* note 117.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Thomas M. Clarke & Rebecca L. Sandefur, *Preliminary Evaluation of the Washington State Limited License Legal Technician Program* (Mar. 2017), [http://www.americanbarfoundation.org/uploads/cms/documents/preliminary\\_evaluation\\_of\\_the\\_washington\\_state\\_limited\\_license\\_legal\\_technician\\_program\\_032117.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf).

<sup>136</sup> *Id.* at 2.

barriers and outcomes of the LLLT model. Some of the initial barriers of the LLLT program identified by the evaluators include affordable legal education, regulatory costs of the program breaking even, and training LLLTs on business management and marketing if they open their own practice.<sup>137</sup>

Washington's LLLT rule is a revolutionary concept that significantly altered the role of paralegals in the legal profession. The program illustrates that paralegals can be regulated and educated to become an asset to the public.<sup>138</sup> Other states are beginning to create similar programs.<sup>139</sup>

Ultimately, these programs are all examples of empowering paralegals to meet a common goal of increasing access to justice. LLLTs, Court Navigators, and Legal Document Assistants all reveal how the practice of law should not be defined as only what lawyers can do, but what all of the legal profession can do. It is the duty of the legal profession to create a more multifaceted legal system.

### Part III: Demystifying Paralegal Practitioners

There are understandable concerns from the legal community about licensing paralegals to provide a limited scope of legal services. With any substantive changes to a profession, it provokes questions and concerns to ensure quality. In 2017, when exploring expanded roles for

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<sup>137</sup> *Id.*

<sup>138</sup> See Adam Rhodes, *Legal Technicians Step In To Fight Justice Gap*, Law360 (Nov. 18, 2018), <https://www.law360.com/articles/1101225/legal-technicians-step-in-to-fight-justice-gap>.

<sup>139</sup> See Nat'l Fed'n of Paralegal Ass'n, *Paralegal Regulation by State* (Aug. 2017), <https://www.paralegals.org/files/2017-08-24%20Regulation%20by%20State%20FINAL.pdf> (a chart of how states regulate paralegals and the different licensure programs that exist).

paralegals, the MSBA Alternative Legal Models Task Force held community listening sessions to obtain input from the Minnesota legal community across the state in 2017.<sup>140</sup> The Minnesota legal community raised concerns about expanding the role of paralegals to increase access to justice. The sessions were attended by a mix of private lawyers, government attorneys, legal aid organizations, and lawyers practicing in small firms. This section aims to address some of the concerns about licensing paralegal practitioners, particularly surrounding the education of paralegal practitioners.<sup>141</sup> While paralegal practitioners not having the proper training is not an exhaustive list of concerns pertaining to paralegal licensure, possessing the proper qualifications tends to be one of the first to be brought up by the legal community.

Attorneys across the state in the Alternative Legal Models Task Force listening sessions were concerned that the lack of legal training for paralegals would result in subpar services being provided to vulnerable populations. Many were supportive of a model that provides more legal services to people who would go without but felt that people should get access to trained attorneys rather than creating a two-tiered legal system based on income. Ultimately, critics of paraprofessional licensure do not believe the services would be beneficial in the long run.

Through education, paralegals receive training that allows them to serve a valuable role in legal service delivery. The medical profession is a helpful analogy to illustrate how innovative education programs train professionals to expand service delivery. Similar to the legal profession, the medical profession requires extensive education and has strict regulatory and

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<sup>140</sup> Minn. St. B. Ass'n Alternative Legal Models Task Force, *Alternative Legal Models Task Force Meeting, 11/17/16* (Nov. 17, 2016), <https://bit.ly/2RsLZuf>.

<sup>141</sup> While this paper substantive addresses the question of quality and paralegal education, there were many other concerns brought up by the Minnesota legal community, including: competition with existing services and new attorneys, malpractice, and some practice areas being too intricate.

ethical guidelines. The medical profession not only has doctors, but other professionals to ensure that there is accessible and quality care for patients. In the mid-twentieth century, the medical profession began to incorporate paraprofessionals like nurse practitioners and physicians assistants.<sup>142</sup> The legal profession should work toward educating and incorporating more delivery models as the medical profession did, which did not result in the deregulation of the profession but enhanced its capacity to serve marginalized populations.

Each of these healthcare professionals have different licensure procedures and regulatory structures, which permit different job functions and authority for patient care.<sup>143</sup> Comparatively, the legal profession has only one widely-used regulatory structure to provide legal services. These changes in healthcare delivery models did not come without work. As evidenced, the medical profession institutionalized physician's assistants and nurse practitioners through education programs and creating regulatory structures.<sup>144</sup> When asked about the relationship between quality and quantity to increase access to legal services, Dr. Mary E. Klotman, Dean the Duke University School of Medicine asserted

I think it is safe to say that medicine has, by and large, moved beyond the tradeoff concern. The conversation in medicine typically isn't about a tradeoff between access and

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<sup>142</sup> See E. Harvey Estes & Reginald D. Carter, *Accommodating a New Medical Profession: The History of Physician Assistant Regulatory Legislation in North Carolina*, 66 N.C. Med. J. 103 (2005) (a historical overview of Physicians Assistants in North Carolina).

<sup>143</sup> See U.S. Dep't of Just. *Mid-Level Practitioners Authorization by State* (last visited Dec. 7, 2018), [https://www.deadiversion.usdoj.gov/drugreg/practioners/mlp\\_by\\_state.pdf](https://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf) (describes different levels of authorization of different mid-level medical professionals in each state).

<sup>144</sup> Harv. U. Ctr for the Legal Prof., *Addressing the Supply Problem*, 4 The Prac. (Jul. 2018), <https://thepractice.law.harvard.edu/article/addressing-the-supply-problem/> ("Put together, during the last five decades, [physician assistants' ("PA")] education has gathered structure and developed into a reliable method of training future PAs, even taking on a gatekeeper role for the new profession. A consistent curriculum has emerged across PA programs with the help of a consensus, independent accreditation entity, and the financial and time commitments to pursuing PA credentials are significantly less than the costs associated with becoming a physician.").



quality. The conversation is about what individual skill sets are needed to provide a full range of care to patient populations.<sup>145</sup>

Ultimately, paralegal licensure would enhance the legal profession by providing a similar range of client care.<sup>146</sup> In order to accomplish this, paralegal practitioners must acquire proper tools through education. Legal scholars who support the expansion of paralegal services assert that quality can be promoted through training that exists for paralegals and court clerks, and design specific curricula through existing paralegal and social work programs.<sup>147</sup>

Trained attorneys unfamiliar with paralegal education may not recognize the extent to which legal education exists outside of law schools. The ABA accredits both Juris Doctor and paralegal programs. Paralegal and Juris Doctor programs simply prepare students with different types of legal skills. While paralegals programs do not delve into theoretical legal analysis to the same extent as law schools, paralegal programs substantively prepare students with legal knowledge and practical skills. Through existing paralegal education in Minnesota, aspiring paralegal practitioners would use their legal knowledge of procedures, forms, and legal systems to assist low- and middle-income people with navigating the legal system. Not as many legal issues require extensive legal analysis by lawyers, but all issues require the legal knowledge that

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<sup>145</sup> Harv. U. Ctr for the Legal Prof., *Extending Access and Quality: A Conversation with Mary E. Klotman*, 4 *The Prac.* (Jul. 2018), <https://thepractice.law.harvard.edu/article/extending-access-and-quality/>.

<sup>146</sup> Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 *U. of Toledo L. R.* 365, 390 (2013), [https://www.utoledo.edu/law/studentlife/lawreview/pdf/v44n2/Spieler\\_CorrFinal.pdf](https://www.utoledo.edu/law/studentlife/lawreview/pdf/v44n2/Spieler_CorrFinal.pdf). (“In the provision of health care, much of the pressure for the development of independent non-physician provider groups, including nurse practitioners and physician assistants, was rooted in a shortage of physicians, particularly primary care physicians. A full analysis of legal needs and the availability of lawyers may suggest that our profession also lacks the availability of affordable ‘primary care’ practitioners, and there are many tasks that can be done by someone with less, but more focused, training.”).

<sup>147</sup> Richard Zorza & David Udell, *New Roles for Non-lawyers to Increase Access to Justice*, 41 *Fordham Urb. L. J.* 1259, 1305 (2014), <http://www.zorza.net/non-lawyer.pdf>.

both paralegals and law students obtain through their education.<sup>148</sup> For example, completing court forms was traditionally reserved for lawyers, but as courts continue to simplify forms, this prohibition makes little sense.<sup>149</sup>

To emphasize, licensed paralegals would not have all of the same specialized knowledge as lawyers, as is the case with nurse practitioners and physicians assistants with doctors. Nurse practitioners and physicians assistants serve a purpose, and they occupy different aspects of service delivery. Nurse practitioners are not providing major surgical operations, but they are helping build capacity of the medical profession through specialized training to provide essential patient care.<sup>150</sup> Paralegal education in Minnesota can be specialized to incorporate more skills and knowledge areas in a specific practice areas (e.g. family, criminal expungements, consumer debt, etc.). Paralegals can be of assistance in matters where extensive legal analysis is not required. They will be able to navigate these areas given the proper training and resources.

As of 2019, there are three ABA-accredited law schools in Minnesota: the University of Minnesota Law School, Mitchell Hamline School of Law, and the University of St. Thomas

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<sup>148</sup> Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 Fordham L. R. 2581, 2595 (1999), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3572&context=flr> (“Furthermore, many tasks that lawyers now perform exclusively could be competently performed by nonlawyers because these tasks do not necessarily require a lawyer’s professional judgment.”).

<sup>149</sup> Zorza & Udell, *supra* note 147 at 1295. See also Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 *Judicature*, 156 (2011), <https://www.srln.org/system/files/attachments/Zorza-Consensus.pdf> (describes form simplifications and services that are needed to increase access to justice).

<sup>150</sup> Kristin Sostowski, *Access to Justice: Reforming Unauthorized Practice Law, Learning from Advanced Practice Nursing Regulation*, 34 Bellow-Sacks Project (May 2001), <https://www.slideshare.net/tomwinfrey/full-text-msword-format> (“The experience of advanced practice nursing regulation strongly supports the argument that access to services can be markedly improved through a combination of liberalized unauthorized practice laws and the creation of a regulatory structure for independent paralegals.”).

School of Law. In addition, there are currently five ABA-approved paralegal programs in Minnesota: Hamline University, North Hennepin Community College, Minnesota State University- Moorhead, Inver Hills Community College, and Winona State University. In both these programs, students receive a comprehensive education that qualifies graduates to work in a wide variety of contexts, including law firms, government agencies, nonprofit organizations, and more. For paralegal programs, ABA approval is a voluntary process, unlike law schools, which must comply with ABA regulations in order to be accredited. For paralegal programs, ABA approval indicates a strong program that includes a variety of structures (e.g. associates, bachelors, masters, and certificate programs) and adheres to quality control measures.<sup>151</sup>

Furthermore, not only could licensed paralegals who are educated provide legal services, they could provide legal services in more places. There is more geographic diversity of ABA-approved paralegal programs than law schools in Minnesota. While all of the Minnesota's law schools are within a 10-mile radius in Minneapolis and St. Paul, only one of the five ABA-approved paralegal programs is located within Minneapolis and St. Paul.

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<sup>151</sup> Am. B. Ass'n Standing Committee on Paralegals, *Guidelines For the Approval of Paralegal Education Programs* (Sept. 1, 2013). (describes how ABA Approval is a rigorous process, and outlines the criteria to approve them).

\*As of May 2018



ABA-Approved Law Schools in MN\*



ABA-Approved Paralegal Programs in MN\*

Ultimately, licensing paralegal programs could provide services of equal quality in a limited scope and encourage more legal service providers to be in greater Minnesota. Overall, quality and quantity of legal service providers at different levels - paralegal practitioners and lawyers - can bridge the justice gap.

On March 8, 2019, Minnesota Supreme Court Chief Justice Lorie Gildea created the Implementation Committee for the Legal Paraprofessional Pilot Project through a court order.<sup>152</sup> The Implementation Committee is charged with determining the structure, format, and rules for a pilot project for the delivery of civil legal services by paraprofessionals. The pilot project will be

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<sup>152</sup> The order can be found [here](#).

“designed to permit legal paraprofessionals to provide legal advice and in some cases represent a client in court under attorney supervision of a licensed Minnesota attorney.”<sup>153</sup> From the work of the 2017 Alternative Legal Models Taskforce, the Implementation Committee will inform the future of legal service delivery in Minnesota through a pilot program.

## Conclusion

In the United States’ legal system, the law is required, but justice is merely implied for the millions who go without legal assistance. Building access to justice should not only be a reaction to injustice, but a proactive measure to ensure equity. The legal professional must pursue solutions that are not convenient, but critically question the status quo of the profession. The bench and bar must reconcile whether they are protecting the interests of the profession, or truly advancing justice for all through innovation.

When accepting the ABA Medal of Honor, Bryan Stevenson asserted, “we’ve got to find new ways to create justice, to open doors that have been closed for too long, to create opportunities for people who feel marginalized and excluded.”<sup>154</sup> While spoken in a different context, his sentiment relates to how paralegals have also been behind a closed door for too long. To bridge the justice gap, the legal profession must be expanded to incorporate more legal service delivery models, notably licensure of paralegals.

Building a bridge involves looking over the edge into the unknown. In the unknown, one must address our discomforts to inform solutions. This commentary is not meant to provide a

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<sup>153</sup> *Id.*

<sup>154</sup> Davis, *supra* note 1.

singular answer, but to provoke more questions to build alternative legal service delivery models that are satisfactory to the profession and the public. The legal profession should utilize all the tools in their arsenal to address entrenched justice disparities and use paralegals for their original intent: to build a bridge across the growing justice gap.