

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

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

**Paulette Brown**  
ABA PRESIDENT 2015–16

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

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

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

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

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

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

## The Findings

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

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

The Legal Services Corporation (LSC)—the independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans<sup>5</sup>—has been a beacon of justice for the underserved. Despite its unrelenting work on behalf of the poor, inadequate funding remains a barrier to helping every poor person with a legal need. Moreover, these efforts do not reach millions of individuals of moderate means

who have legal problems and cannot afford legal solutions. Longstanding efforts, such as group and pre-paid legal plans, pro bono projects, and similar endeavors,<sup>6</sup> have helped to address some of these issues, but significant gaps remain.<sup>7</sup>

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

The Commission applauds these and many other similar efforts.<sup>8</sup> They have helped to ensure that more people are able to address their essential legal needs through meaningful access to legal services. Much work, however, remains to be done.<sup>9</sup>

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

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

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

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

One study indicated that “well over 100 million Americans [are] living with civil justice problems, many involving what the American Bar Association has termed ‘basic human needs.’”<sup>15</sup> The ABA defines “basic human needs” cases as including matters related to shelter (for example, eviction proceedings), sustenance (for example, “denials of or termination of government payments or benefits”), safety (for example, “proceedings to obtain or enforce restraining orders”), health (for example, claims to Medicare, Medicaid, or private insurance for “access to appropriate health care for treatment of significant health problems”),

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

In 2006, the ABA House of Delegates adopted Resolution 112A, encouraging legislatures to “provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake.”<sup>18</sup> Although there has been some modest progress in this area (for example, in 2016, Connecticut passed a civil right to counsel bill to create a task force with the specific purpose of examining access to counsel in civil matters<sup>19</sup>) much work remains to be done.

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

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

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

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

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

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

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

Congress has never fully funded the LSC to adequately address the civil legal needs of people with low incomes. In recent years, the LSC budget has been especially compromised, with Congressional appropriations decreasing from \$420 million in 2010 to \$365 million in 2014 at the very time that needs were increasing.<sup>26</sup> Had LSC's funding kept pace with inflation compared to appropriations in the mid-1990's, the current annual funding would be more than \$650 million.<sup>27</sup> Estimates suggest that full funding for LSC to address all unmet legal needs of those living in poverty would require an appropriation far exceeding \$650 million. Even if Congress were to fully fund

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

Although the LSC network is the largest source of funding for civil legal aid, funding also exists at the state level from governments and private sources. Unfortunately, funding varies considerably by state, so the public's access to basic services is uneven. It has been observed that "geography is destiny" in that the legal "services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live" and whether funding has been allocated to their particular need.<sup>28</sup> Moreover, even in the most generous jurisdictions, state governments allocate insufficient resources to ensure meaningful access to legal services for all who need them. At the same time, there have been significant declines in another key funding source for state-specific funding for civil legal services: the Interest on Lawyers Trust Accounts (IOLTA), programs in all 50 states and the District of Columbia, which are meant to fund civil legal aid programs with the interest generated from client funds held by lawyers. For example, in Massachusetts alone, the economic downturn reduced IOLTA funding from \$31.8 million in 2007 to an estimated \$4.5 million in 2015.<sup>29</sup>

#### [b. Pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs.](#)

The ABA's 2013 Report on the Pro Bono Work of America's Lawyers documents "the legal profession's longstanding and ongoing commitment to pro bono legal services as a core value."<sup>30</sup> Approximately eighty percent of the attorneys surveyed report providing at least some pro bono service, with an average of approximately seventy hours per year for those who do so.<sup>31</sup> For example, many

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

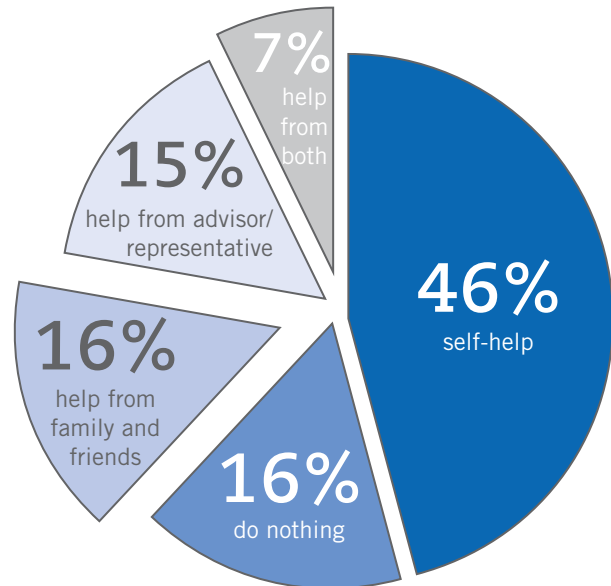
### c. Efforts targeting legal assistance for moderate-income individuals have not satisfied the need.

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

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

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

## Civil Justice Issues



SOURCE: ACCESSING JUSTICE IN THE CONTEMPORARY USA

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

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



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

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

In short, evidence suggests that:

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

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

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

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

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

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

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

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

Dana M. Hrelc

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

Some have argued that the prohibition on partnership and co-ownership/investment with nonlawyers is also inhibiting useful innovations. Jurisdictions outside the United States are experimenting with new forms of alternative business structures (ABS) in an effort to fuel innovation in the delivery of legal services.<sup>60</sup> In the United States, only two jurisdictions permit forms of ABS: the District of Columbia<sup>61</sup> and Washington State.<sup>62</sup> Although D.C. permits nonlawyer ownership, very few ABS firms have organized there because of the restrictions on ABS outside of D.C.<sup>63</sup> Nonlawyer ownership in Washington State is limited to Limited License Legal Technicians (LLLT), who may own a minority interest in law firms.<sup>64</sup> Outside of the United States, more jurisdictions permit ABS. Australia, England and Wales, Scotland, Italy, Spain, Denmark, Germany, the Netherlands, Poland, Spain, Belgium, Singapore, New Zealand and some Canadian provinces permit ABS in one form or another.<sup>65</sup>

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

“The legal profession tends to look inward and backward when faced with crisis and uncertainty,” wrote one scholar in documenting the American legal profession’s historical resistance to change.<sup>66</sup> This fact extends back to the early 1900s, even when other industries and society as a whole were in the midst of a significant transformation. As Henry P. Chandler observed in the early 1930s:

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

Chandler’s observation mirrors Karl Llewellyn’s 1938 critique of the profession: “Specialized work, mass-production, cheapened production, advertising and *selling*—finding the customer who does not know he wants it, and *making* him want it: these are the characteristics of the age. Not, yet, of the Bar.”<sup>68</sup> Of course, this same critique was true at the turn of the 20th century, when Roscoe Pound famously described how the legal profession’s resistance to change directly contributed to the public’s dissatisfaction with the justice system in his speech, “The Causes of Popular Dissatisfaction with the Administration of Justice.”

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

consumers of legal service but would affect traditional ways of delivering legal services. A 2016 study examining the state of the legal market observed: “At least since the onset of the recession in 2008, law firm clients have increasingly demanded more efficiency, predictability, and cost effectiveness in the delivery of the legal services they purchase. In the main, however, law firms have been slow to respond to these demands, often addressing specific problems when raised by their clients but failing to become proactive in implementing the changes needed to genuinely meet their clients’ overall concerns.”<sup>70</sup> Consequently, the study reported, “clients have chosen to ‘vote with their feet’ by reducing the volume of work referred to outside counsel and by finding other more efficient and cost effective ways of meeting their legal needs.”<sup>71</sup>

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

Dwight L. Smith

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



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

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

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

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

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

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

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

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

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

**Marty Smith**

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

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

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

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

### a. Courts

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

- **REMOTE ACCESS TECHNOLOGY:** Courts are developing and employing technology to make some services available remotely, such as document filing, docket/record searches,

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

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

services,<sup>92</sup> and additional jurisdictions are considering doing so.<sup>93</sup> As the Washington Supreme Court observed in implementing the Limited Practice Rule for Limited License Legal Technicians (LLLTs), “There are people who need only limited levels of assistance that can be provided by nonlawyers.”<sup>94</sup> The Commission studied and considered six examples of already-existing LSPs:

**Federally-Authorized LSPs.** There is a wide range of legislatively authorized LSPs serving in federal courts and agencies. For example, bankruptcy petition preparers assist debtors in filing necessary legal paperwork in the United States Bankruptcy Court.<sup>95</sup> Bankruptcy petition preparers are only permitted to populate forms; additional services may constitute the unauthorized practice of law.<sup>96</sup> Notably, “research on lay specialists who provide legal representation in bankruptcy and administrative agency hearings finds that they generally perform as well or better than attorneys.”<sup>97</sup>

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

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

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

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

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

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

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

## New York Housing Court Navigators



**3,400**  
pro bono hours  
contributed



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

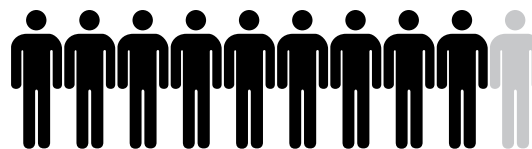


Crown Heights, Brownsville, and South Jamaica.

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

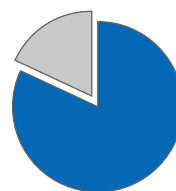
**Courthouse Facilitators (California, Washington State).** Courthouse facilitators provide unrepresented individuals with information about court procedures and legal forms in family law cases.<sup>123</sup> In California, the Judicial Council administers the program by "providing funds to these court-based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

## Courthouse Facilitators



9 out of 10

customers feel more knowledgeable and prepared immediately after a visit with a facilitator



82%  
have more trust and confidence in the courts

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

Washington State has an analogous program established by the Washington Supreme Court, with oversight from the Family Courthouse Facilitator Advisory Committee. The Committee is charged with establishing minimum qualifications and administering continuing training requirements for courthouse facilitators.<sup>131</sup> During 2007, facilitators statewide conducted approximately

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

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

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

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

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

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

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

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

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

We recognize the value of a lawyer representing a client in litigation, or advising a client about options, or counseling a client on a course of action. We recognize the valuable services that lawyers provide to their clients every day, in and out of court. But the data show that, even after

years of effort with pro bono and low bono programs, a large number of people do not have a lawyer to help them. The data also show that the demand is focused on the areas where the law intersects everyday life, creating a “civil justice situation.” The people facing these situations need correct information and advice. They need ... an alternative source for that assistance.<sup>158</sup>

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

A useful, albeit not perfect, comparison to those LSP categories cataloged above can be found in the delivery of medical services. Healthcare is now delivered not only by licensed doctors, but also by an increasing array of licensed and regulated providers, such as nurse practitioners, physicians’ assistants, and pharmacists. The “medical profession and nurse practitioners [are] a poignant example of less costly service providers who have become a more widely used, professionalized, and respected component of the health care market.”<sup>165</sup> These providers supplement the work performed by doctors, but do not replace doctors. Similarly, LSPs are not meant to replace lawyers or reduce their employment opportunities, just as nurse practitioners, physician’s assistants, pharmacists and phlebotomists are not meant to replace doctors. LSPs are intended to fill gaps where lawyers have demonstrably not satisfied existing needs. A number of scholars<sup>166</sup> and regulators<sup>167</sup> predict that LSPs will improve access to legal services by offering assistance to those in need at a lower cost than lawyers.

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

## b. Bar Associations

State, local, and specialty bar associations across the country are innovating in various ways. Examples include the following:

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

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

- **ACCESS TO JUSTICE AND FUTURE OF LEGAL SERVICES ENDEAVORS** Numerous state and specialty bar associations have engaged in grassroots efforts through task forces and commissions devoted to access to justice and the future of legal services.<sup>173</sup> Nearly every state has engaged in an access to justice/ legal needs study in the past decade.<sup>174</sup> “Access to Justice Commissions” now exist in thirty-nine states and have been created by the relevant state supreme court or through the efforts of bar leaders or others.<sup>175</sup> These

commissions are typically collaborative entities that bring together courts, the bar, civil legal aid providers, and other stakeholders in an effort to remove barriers to civil justice for low-income and disadvantaged people.<sup>176</sup> These efforts have produced many useful reforms, including expanded resources for civil legal aid programs, uniform court forms, improvements in services for self-represented litigants, and other innovations.

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

### c. Law Schools: Curriculum and Incubators

Many law schools are now educating law students about innovation in legal services delivery. For example, a number of law schools now offer courses on e-discovery, outcome prediction, legal project management, process improvement, virtual lawyering, and document automation.<sup>177</sup>

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

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

**Daniel B. Rodriguez**

HAROLD WASHINGTON  
PROFESSOR AND DEAN

NORTHWESTERN  
UNIVERSITY PRITZKER  
SCHOOL OF LAW

CHICAGO, IL



graduates to engage in rigorous innovation. More than thirty-five schools now offer this sort of post-graduate incubator experience,<sup>180</sup> and most law schools offer clinical opportunities for students to gain practical, hands-on training.

Additional law school innovations are described in the Inventory of Innovations found on the Commission’s website.<sup>181</sup>

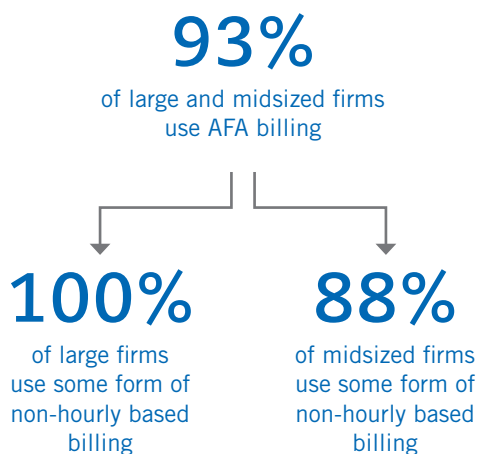
**d. Lawyers, Law Firms, and General Counsel**

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

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

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

## Alternative Fee Arrangements (AFA)



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

2016. SmartLaw “connect[s] consumers with qualified attorneys who can help them handle uncontested divorces, small business formation and trademark registration.”<sup>188</sup> Fees are set at \$800 for an uncontested divorce or LLC business formation, and \$500 for trademark registration.<sup>189</sup>

- **DOCUMENT ASSEMBLY AND AUTOMATION**

Document assembly tools automate the creation of oft-used legal documents, such as wills, leases, contracts, and client engagement letters.<sup>190</sup> These tools decrease the amount of lawyer-time involved in preparing documents, thus increasing the efficiency of a lawyer’s practice,<sup>191</sup> or in some cases, allowing individuals to create legal documents without the assistance of a lawyer. A 2009 survey by the ABA on legal technology adoption indicated that thirty-four percent of respondents used document assembly software, an increase from thirty percent in the previous year.<sup>192</sup> Many legal aid offices also use document assembly software to serve clients. For example, A2J Author, a joint project between Chicago-Kent College of Law and the Center for Computer-Assisted Legal Instruction, has been used to reach nearly two million legal aid clients across the country to conduct automated interviews and generate legal documents.<sup>193</sup>

- **LEGAL PROCESS OUTSOURCING** Legal process outsourcers (LPOs) are reducing the cost of legal services, especially for business and organizational clients, while putting pressure on the traditional law firm business model. Legal process outsourcing involves the performance of discrete legal projects or tasks by typically less expensive third party vendors.<sup>194</sup> The LPO industry is currently valued at one billion dollars in revenue per year.<sup>195</sup> LPOs often are based in countries overseas or in smaller, less expensive U.S. markets. LPOs initially offered transcription, word processing, and other routine tasks, including paralegal services. Over time, LPOs have expanded to offer more substantive tasks, such as patent applications, e-discovery, contract management, compliance, and legal research

for a fraction of the price typically charged by law firms.<sup>196</sup> One benefit for law firms is that their lawyers spend more time on higher value-added activities rather than on routine tasks (that is, they are more likely to be practicing “at the top of their licenses”).

- **LEGAL STARTUPS** The concept of “legal startup” has been defined as “a newly formed organization providing innovative products or services to improve legal service delivery.”<sup>197</sup> The legal-tech startup industry, essentially nonexistent a decade ago, is developing, although little data exists to accurately assess the impact of legal startups. As one rough measure, in 2009, fifteen legal startups appeared on AngelList, a website for startups and their angel investors.<sup>198</sup> In 2016, over 400 legal startups (and perhaps as many as 1,000) were in existence.<sup>199</sup> Financial investment into legal startups, perhaps, is another measure—in 2013, it was reported that \$458 million had been invested in legal startups.<sup>200</sup> Legal startups have tapped into a number of market segments:

1. Business to consumer, including small businesses—for example, finding lawyers, lawyer ratings, and lawyer matching; do-it-yourself legal tools; law for small transactions, such as a simple contract; form documents; document automation/assembly; dispute avoidance/management; collaborative law; and litigation finance.
2. Business to business—this includes many of the items listed under business to consumer as well as legal supply chain management; billing data analytics; legal temp services and contract lawyers; legal process outsourcing; compliance; contract management; risk management; and online dispute resolution.
3. Business to lawyer/law firm/legal departments—this includes many of the items listed in the above categories as well as lawyer marketing, legal research, crowdsourcing, analytics, legal education and

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

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

hospitals, health centers, medical schools, and residency programs.<sup>204</sup>

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

## Legal Startups

As one measure, number of legal startups appearing on AngelList

15  
in 2009

400  
in 2016

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

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

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

as LPOs.<sup>219</sup> As a result, these procurement professionals are creating pressures for additional innovation in the delivery of corporate legal services. In-house lawyers also are becoming more adept at procurement, negotiating, and supply chain management skills so that they can best manage the procurement of legal services for their clients.

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



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

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

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

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

types of providers.

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

U.S. Census data evaluated in one recent study indicated that, since 1998, law office employment has actually shrunk while “all other legal services” have grown eight and a half percent annually and 140 percent over the whole period.<sup>240</sup> Another report from 2014 discussed the explosion of the “Online Legal Services Industry,” which the report defined as virtual law firms and legal service companies that deliver bundled and unbundled documents and services.<sup>241</sup> Significantly, this industry did not exist a decade ago, but as of 2014, it was valued by one source at approximately \$4.1 billion.<sup>242</sup> This segment has grown at an annualized rate of nearly eleven percent over the previous five years and is projected to grow nearly eight percent to \$5.9 billion by 2019.<sup>243</sup>

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

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

**Ruth Hill Bro**

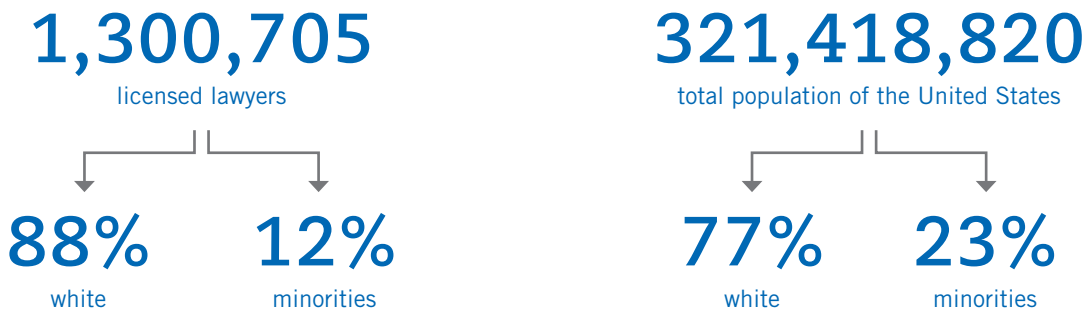
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## Diversity in 2015



many consumers are choosing these nontraditional legal services providers over traditional law firms<sup>245</sup> or are using these legal services providers to access law firm services.

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

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

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

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

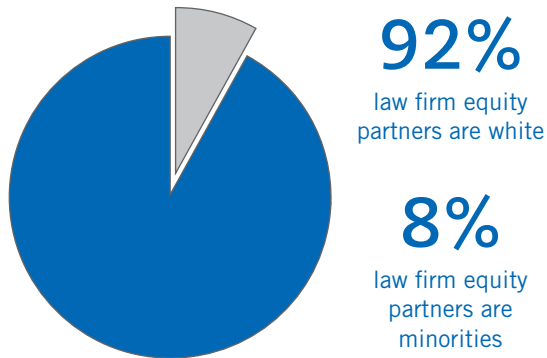
#### 1. The legal profession does not yet reflect the diversity of the public, especially in positions of leadership and power.

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

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

The United States is demographically diverse and becoming more so. The U.S. Census Bureau predicts that by 2020, “more than half of the nation’s children are expected to be part of a minority race or ethnic group.”<sup>249</sup> While the legal profession has become more diverse, it does not reflect the diversity of the American public as a whole. This is especially true in positions of leadership and power in the profession.<sup>250</sup>

## Demographics in 2015



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

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

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

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

“For the legal profession, understanding implicit bias and ways to de-bias one’s approach to law-related issues and decisions is critical to a fair and representative perception and reality of access to justice and equity.”<sup>268</sup> It is difficult to define the problem of implicit bias with precision, but as one scholar explained:

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

If we unpack these schemas further, we see that some of the underlying cognitions include stereotypes, which are simply traits that we associate with a category. For instance, if we think that a particular category of human beings is

frail—such as the elderly—we will not raise our guard. If we think that another category is foreign—such as Asians—we will be surprised by their fluent English. These cognitions also include attitudes, which are overall, evaluative feelings that are positive or negative. For instance, if we identify someone as having graduated from our beloved alma mater, we will feel more at ease. The term “implicit bias” includes both implicit stereotypes and implicit attitudes.

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

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

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

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

ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias; and

2. require a designated minimum number of hours for this separate credit without increasing the total number of required MCLE hours and without changing the criteria for MCLE credit.

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

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

Many Americans lack basic knowledge about the justice system. A common complaint among unrepresented litigants “when navigating the court system is difficulty reading and understanding the forms due to confusing and complex language.”<sup>274</sup> Other challenges include “the complexity of the legal system, lack of knowledge, language and comprehension difficulties, lack of uniformity from court to court, and the sheer intimidation of the process.”<sup>275</sup>

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

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



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

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

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

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

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

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

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

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

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

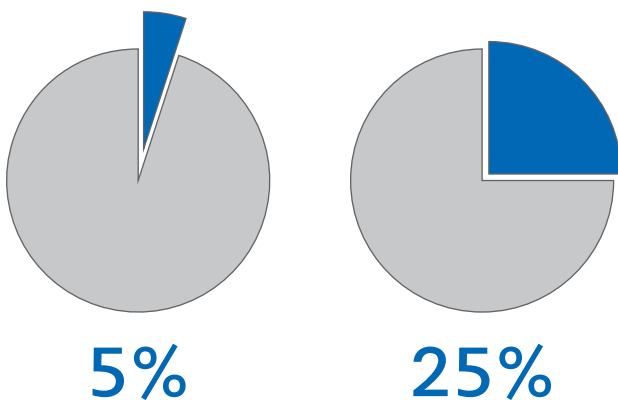
The United States leads the world in incarceration rates, with more than two million people in jail or prison.<sup>292</sup> Although the current system of imprisonment is based on crime prevention, control, and punishment, this results in an overbalance toward punishment.<sup>293</sup> As a consequence,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

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

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

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

## The U.S. Criminal Justice System



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

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

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

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

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

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

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

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

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