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ACCESSIBILITY AND THE AMERICAN LEGAL SYSTEM: A CASE FOR PARALEGAL LICENSURE

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The legal profession has debated how to adequately provide legal services to a large segment of the US population who cannot afford to pay standard legal fees. One solution has been for the profession to provide legal services for free (pro bono) to underserved populations. Another solution has been to for the government to support the provision of free legal services via Legal Aid Agencies. Over the last three decades, a third option has been considered in several states, limited licensing of paralegals to practice law. Washington State was an early adopter of paralegal licensing (Limited Licensed Legal Technician), and Utah (Licensed Paralegal Practitioners) became the second state to license paralegals to practice law in limited areas (Family, Landlord-Tenant, and Debt Collection) and Oregon has an active proposal for paralegal licensing (Licensed Paralegal). The Oregon proposal asserts that licensed paralegals would support the provision of needed legal services in the areas of family law and landlord tenant the way Nurse Practitioners are licensed to provide basic medical services to the public. Other states like California and Illinois are studying whether to license paralegals to practice law in a limited way.

Should paralegals be licensed to practice law under limited circumstances?

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a legal assistant for Hunt Ortmann, specializing in construction law. Finding litigation's adversarial nature somewhat distasteful, he changed direction, becoming a paralegal for entertainment attorney Dani Oliva and assisting international artists with B-1 and P-2 visa petitions. There, his interest in law intersected with his decade-long experience as a musician living and working in Tokyo. Currently, Ryan is pursuing a bachelor's degree in French at San Jose State University, with plans to study International Law at the Faculté de Droit de l'Université Catholique de Lille thereafter.

Despite the exemplary intentions of legal aid organizations offering free legal services to low-income individuals, one out of every two individuals is denied legal aid due to the lack of resources available to these nonprofit groups.¹ And although 80% of attorneys reported providing at least 50 hours of pro bono services per year,² 92% of Americans from low-income backgrounds received either inadequate, or no legal aid when faced with a legal challenge.³

The inability to attain proper legal aid extends to those of moderate-income brackets as well. Former Chief Justice John Broderick of the New Hampshire Supreme Court stated that "[t]he self-represented are no longer just the poor, but their ranks now include more members of the middle-class and a rising number of small businesses."⁴ Thus, it is imperative that individual States follow in the steps of Washington and Utah and enact legislation allowing for paralegal licensure in limited areas of law. Such would enable low to moderate income individuals' greater accessibility to the justice system, by way of affordable and professional legal services.

In 2015 Washington became the first state to issue paralegals licenses to practice family law under the LLLT (Limited Licensed Legal Technician) program. Washington States sought to address the justice gap that saw 80-90% of family law cases involving one or more self-represented parties.⁵ With regards to family law cases, King County Judge Jonathan Lack is noted as saying that the LLLT program "provides access for women and people of color, who are also getting better results in their cases."⁶ Similarly, the Oregon Department of Justice determined via the 2018 *Civil Legal Needs Study* that single parents and African Americans were 2.8 and 1.5 times more likely to have family law problems, respectively.⁷ Regarding the Oregon State Supreme Court's consideration to license paralegals for family and landlord-tenant legal services, the Oregon State Bar stated, "These are two of the areas of law with the greatest unmet need for legal assistance in Oregon."⁸

Moreover, Washington State's LLLT program has provided a blueprint for all other states to expand upon and address legal issues that have an impact on low to moderate income individuals, such as eviction; the leading cause of homelessness in America.⁹ Utah, which allows licensed paralegals to practice family, landlord-tenant and debt collection law, found that 95% of respondents in eviction matters, were self-represented.¹⁰ Studies in Baltimore purported that tenants were largely unaware of their rights regarding eviction and were moreover unrepresented legally.¹¹ Furthermore, the NYC Office of Civil Justice found that "84% of households represented in court...were able to remain in their homes."¹² Thus, proving that a reduction in the justice gap provided a direct solution to America's homeless crisis.

Opponents of paralegal licensure may cite Washington State Supreme Court's decision to

end the program in 2020¹³ as evidence that the State's LLLT program was a failure. However, from the LLLT program's onset a notable conflict of interest was made apparent as the WSBA (Washington State Bar Association) who blocked its inception in 2006 and 2008, later housed and funded the LLLT program from 2015.¹⁴

Moreover, many suspect that the WSBA's opposition to the LLLT program stems from Washington lawyers' concern, "that their market share would be eroded by non-lawyers."¹⁵ In contrast to those at the WSBA, Associate General Counsel at the Utah State Bar, Scotti Hill states "[T]he market predominantly captured by [paraprofessionals] are not those who would otherwise hire lawyers, but instead those who would opt for self-representation."¹⁶

Although costs for legal services from either a paralegal or lawyer vary greatly depending on one's experience and location, on average a lawyer earns \$127,990 per year,¹⁷ while a paralegal only earns 44% of what the average lawyer earns at \$56,230 per year.¹⁸ Accordingly, one can expect a similar difference between the fees that a lawyer charges and those that a paralegal would charge.

Overall, self-represented individuals, particularly African Americans, risk unjustifiably losing their homes due to the difficulty of self-navigating landlord-tenant law. Single women, risk not being able to provide for, or protect their children should monetary constraints limit their ability to petition the court for child support or restraining orders. Licensed paralegals would fill these particular gaps in justice due to their expertise and affordability. Furthermore, state legislators and bar associations, owe a moral duty to see that the justice gap grows not larger, but smaller.

¹ LEGAL SERVS. CORP., 2021 JUSTICE GAP MEASUREMENT SURVEY (2022), <https://justicegap.lsc.gov/resource/executive-summary/> [hereinafter LSC SURVEY].

² ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS (2018), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/other-documents/lsc_pb_supporting_justice_iv_final.pdf

³ LSC SURVEY, *supra* note 1.

⁴ John T. Broderick, Jr., *A Roadmap Toward Justice*, 12(3) DIALOGUE (Summer 2008), at 28, 29.

⁵ NATALIE ANNE KNOWLTON, ET AL. CASES WITHOUT COUNSEL: OUR RECOMMENDATIONS AFTER LISTENING TO THE LITIGANTS, (Inst. for the Advancement of the Am. Legal Sys. 2016).

https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf

⁶ JASON SOLOMON & NOELLE SMITH, THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM, (Stanford Ctr. on the Legal Profession, 2021), at 1. <https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf>

⁷ OR. LAW FOUND., ET AL., BARRIERS TO JUSTICE: A 2018 STUDY MEASURING THE CIVIL NEEDS OF LOW-INCOME OREGONIANS, (Feb. 2019), at 6. <https://oregonlawfoundation.org/wp-content/uploads/2023/12/barriers-to-justice-2018-or-civil-legal-needs-study.pdf>

⁸ OR. STATE BAR, OREGON STATE BAR'S LICENSED PARAPROFESSIONAL PROGRAM: RESEARCH REPORT (Jan. 2022), at 5. https://paraprofessional.osbar.org/files/2021_PPLIC_BOGReport.pdf

⁹ See MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016).

¹⁰ Julie M. Emery, *Utah's Licensed Paralegal Practitioners – What Lawyers Need to Know*, BAR & BENCH at 11 (Salt Lake Cty. Bar Assn., Winter 2019), <https://static1.squarespace.com/static/5e2c9be21708921641026f2a/t/5e4036babab6ba3cfa3ea9e0/1581266623310/B ar-Bench-Winter-2019.pdf>

¹¹ PUB. JUSTICE CTR., JUSTICE DIVERTED: HOW RENTERS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT iv-v (2015). https://www.publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf

¹² OFFICE OF CIVIL JUSTICE N.Y.C., HUMAN RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY 8 (2021).

<https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-Annual-Report-2021.pdf>.

¹³ *Washington Supreme Court Opts to Sunset Limited License Legal Technician Program*, ABA BAR LEADER WEEKLY (June 10, 2020).

<https://www.americanbar.org/content/dam/aba/publications/barleaderweekly1/2020/061020.pdf>

¹⁴ SOLOMON & SMITH, *supra* note 6, at 3.

¹⁵ Lyle Moran, *How the Washington Supreme Court's LLLT Program Met Its Demise*, ABA JOURNAL (2020), https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise#google_vignette.

¹⁶ SOLOMON & SMITH, *supra* note 6, at 20.

¹⁷ U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK: LAWYERS (2022), <https://www.bls.gov/ooh/legal/lawyers.htm>.

¹⁸ U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK: PARALEGALS (2022), <https://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm>

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