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April 30, 2026

Supreme Court of Tennessee
James Hivner, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

RE: Public Comment in Response to Tennessee Supreme Court Order No. ADM2025-01403

Dear Justices of the Supreme Court of Tennessee:

We write as the leaders of Stanford Law School's Deborah L. Rhode Center on the Legal Profession (Rhode Center) to provide public comment in response to Tennessee Supreme Court Order No. ADM2025-01403 regarding potential regulatory reforms to increase access to quality legal representation. Specifically, our comment addresses nonlawyer legal service providers and nonlawyer ownership of law firms. We hope that the Rhode Center's research on these subjects will be helpful to you and your colleagues as you consider whether and how to move forward with regulatory innovation efforts.

Thank you for the opportunity to share our perspective.

Nonlawyer Legal Service Providers

Access to justice is a cornerstone of our legal system, encapsulated by the four words inscribed on the façade of the United States Supreme Court building: *equal justice under law*. Unfortunately, these words do not reflect the system's day-to-day reality. The justice gap statistics detailed in Tennessee Supreme Court Order No. ADM2025-01403 are shocking but no longer surprising.[1] Worse, the underserved populations that appear in courts without any

[1] In re. Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403, at 2–3 (Tenn. 2025). *See also* NAT'L CTR. FOR STATE CTS., THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31 (2015) (noting that "the average percentage of cases in which both sides were represented by counsel was only 24 percent"); NAT'L CTR. FOR STATE CTS. ET AL., FAMILY JUSTICE INITIATIVE: THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURT 20 (2018) (finding that both the petitioner and respondent in divorce and separation cases were represented in 20% of cases). For the fact these statistics represent a significant uptick from prior decades, see DIST. OF COLUMBIA COURTS CIVIL LEGAL REGULATORY REFORM TASK FORCE, JULY 2025 REPORT 9 (2025) ("The earliest studies of self-representation date from the mid-1970s and found self-representation rates ranging from 2.7% of cases to approximately 20% of cases. As of 2015, according to the National Center for State Courts, more than three-quarters of civil cases in state courts involved at least one self-represented litigant.")

legal help are only a relatively small part of the story. They are eclipsed by the tens of millions of additional Americans we do not see because, although they may be confronting a significant legal problem—and, although they may well have a valid entitlement to relief under the formal law—they are taking no steps to protect their interests.[2]

When individuals are on the receiving end of a lawsuit, the story is similar. Many would-be defendants also take no action, and this failure to act frequently results in default judgments.[3] In some areas of the country, and for some kinds of claims (chiefly, debt collection actions), default judgment rates approach or even exceed 90%.[4] A substantial portion of these default judgments are undeserved, meaning that the underlying claim was invalid.[5] Regardless, once these judgments issue, they frequently kick off their own dismal spiral of wage garnishments and home evictions.[6]

The brutal reality is that many Americans do not have any access to justice at all.[7]

What explains this?[8] The simplest answer relates to cost and the lack of affordable legal

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[hereinafter D.C. TASK FORCE REPORT]; Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. 146, 150 (2024) (tracing the "significant growth in the proportion of [self-represented litigants] in state courts"). For a helpful compilation of additional evidence, see Judith Resnik et al., *Lawyerless Litigants, Filing Fees, Transaction Costs, and the Federal Courts: Learning from SCALES*, 119 NW. L. REV. 110, 110 n.3 (2024). In federal courts, one-fourth of plaintiffs—and about half of those who seek appellate review—"navigate the system without lawyer assistance." *Id*. at 110–11.

[2] *See* LEGAL SERV. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 8 (2022) (reporting that low-income Americans "do not get any or enough legal help for 92% of the problems that have a substantial impact on them"); Nora Freeman Engstrom, *She Stood Up: The Life and Legacy of Deborah L. Rhode*, 74 STAN. L. REV. ONLINE 1, 8 (2021) (explaining that the "pro se litigants we see in court are merely the tip of the iceberg").

[3] *See* DAVID FREEMAN ENGSTROM ET AL., A BLUEPRINT FOR EXPANDING ACCESS TO JUSTICE IN LOS ANGELES SUPERIOR COURT'S EVICTION DOCKET 8 (2025) ("In consumer debt collection cases, multiple jurisdictions report default-judgment rates as high as 90–95%. In eviction, default-judgment rates range widely but several jurisdictions report rates from 20–40%.").

[4] *Id*.

[5] *Id*. at 8–9 (detailing the prevalence of "unjust resolution[s]" including debt collection judgments that "involve[e] debts that were paid off, never incurred, inflated, time-barred, or discharged in bankruptcy").

[6] For the fact default judgments often result in wage garnishments, see FREDERICK F. WHERRY & HANNAH HILL, DEBT COLLECTION LAB, HOW STATE POLICIES AFFECT COURT JUDGMENTS IN DEBT COLLECTION LAWSUITS: A COMPARATIVE STUDY ACROSS FOUR STATES 7 (2024); *see also* HAZEL GENN, PATHS TO JUSTICE 35 (1999) ("Certain types of situations can have a cascade effect. For example, threatened repossession of the family home can lead to marital strain and breakdown, marital health problems, leading to difficulties at work and problems in caring for children.").

[7] Experts estimate that Americans experience more than 150 million new civil justice problems annually. *See* Rebecca L. Sandefur & James Teufel, *Assessing America's Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 765 (2020). At least 120 million of those problems go unresolved. *See* INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & HAGUE INST. FOR INNOVATION OF L., JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA 235 (2021).

[8] For a deeper dive into this "why?" question, see generally Engstrom & Engstrom, *supra* note 1.

services, including free or subsidized help.[9] People don't hire lawyers because people cannot afford lawyers. And, legal services are so expensive, in part, because modern unauthorized practice of law (UPL) rules—which tend to be both vague and capacious[10]—force a person seeking help with a legal problem through one of two doors: hire Cadillac counsel or forgo representation (and action) entirely.[11] UPL laws exist, it is said, to protect consumers from "unqualified and incompetent practitioners."[12] They also exist, as one of us has demonstrated, because, under the shadow of the Great Depression, the organized bar undertook a coordinated and explicitly protectionist campaign against unlicensed individuals, as well as corporate entities providing legal services.[13]

As the Tennessee Supreme Court Order notes, over the past half-century, well-intentioned policymakers have introduced a bevy of reforms to fill the yawning justice gap. Most of them have been lawyer-centric: Policymakers have tried to encourage (or, more controversially, require) deeper commitments to pro bono; advocated for increased funding for legal aid; and championed the creation of more moderate-means programs. But these policy efforts have

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[9] *See id.* at 156 ("When asked why they are representing themselves, pro se litigants don't typically highlight their distrust of lawyers; they more often point to economic necessity."); Gillian K. Hadfield, *Legal Markets*, 60 J. ECON. LIT. 1264, 1291 (2022) ("The principal reason that so few individuals and small businesses avail themselves of legal services is cost and availability."). Some people, of course, refrain from hiring lawyers for noneconomic reasons. *See, e.g.,* Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1266–68 (2016). For the gaps in access to subsidized legal services see LEGAL SERV. CORP., *supra* note 2, at 9 (explaining that LSC-funded organizations do not have the resources necessary to meet individuals' demand for services and, as a result, one in two otherwise-eligible Americans who actually seek help are turned away).

[10] As Justice Douglas lamented as far back as 1967: "The line that marks the area into which the layman may not step except at his peril is not clear." Hackin v. Arizona, 389 U.S. 143, 150 (1967) (Douglas, J., dissenting). More recently, Justice Gorsuch observed that "the definitions states have adopted, usually at the behest of local bar associations, are often breathtakingly broad and opaque." Neil M. Gorsuch, *Access to Affordable Justice*, 100 JUDICATURE 46, 48 (2016). For further discussion, see Bruce A. Green, *Should State Trial Courts Become Laboratories of UPL Reform?*, 92 FORDHAM L. REV. 1285, 1289 (2024); Lauren Sudeall, *The Overreach of Limits on "Legal Advice,"* 131 YALE L.J.F. 637 (2022).

[11] Engstrom, *supra* note 2 (remembering Deborah Rhode's work in civil access to justice and broader impact on the legal profession).

[12] Model Code of Prof'l Responsibility EC 3-1 (1980) (declaring that "[t]he prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence"); Matthew Longobardi, *Unauthorized Practice of Law and Meaningful Access to the Courts: Is Law Too Important to Be Left to Lawyers?*, 35 CARDOZO L. REV. 2043, 2048–49 (2014) ("Several different rationales have been put forward in defense of UPL rules, but the main justification is that UPL prohibitions protect consumers from unqualified and incompetent practitioners."); Donald T. Weckstein, *Limitations on the Right to Counsel: The Unauthorized Practice of Law*, 1978 UTAH L. REV. 649, 650 (1978) ("The most frequently stated purpose of prohibiting non-lawyers from practicing law is to protect the public from incompetent and unethical performance").

[13] Nora Freeman Engstrom & James Stone, *Auto Clubs and the Lost Origins of the Access-to-Justice Crisis*, 134 YALE L.J. 123 (2024) (surfacing the lost history of America's auto clubs and the rotten roots of today's UPL bans). For a multifaceted look at the lawyers' monopoly see RETHINKING THE LAWYERS' MONOPOLY: ACCESS TO JUSTICE AND THE FUTURE OF LEGAL SERVICES (David Freeman Engstrom & Nora Freeman Engstrom eds., 2025).

generally fallen short.

Nontraditional solutions, too, have sputtered. Prepaid legal services and legal insurance, for example, were once seen as a promising solution to cover unmet legal need. At one time, thousands of plans were in operation. But they did not—and will not—make a dent in the access to justice crisis.[14]

This is not to say that we are completely lacking solutions involving other providers. A robust ecosystem of self-help resources for unrepresented litigants has developed in courts and community organizations. Similarly, legal and justice technology companies now dot the DIY landscape. But there remain millions of Americans who need help beyond legal information.[15] They need legal *services*. They aren't getting the services they need. And, into this landscape, a growing number of jurisdictions are turning to new, nonlawyer providers to help.

Yet, many policymakers are still uncertain: is it sensible to invite nonlawyers into the fold? Evidence suggests it is.

To assist policymakers as they explore ways that nonlawyers could help to close the civil justice gap, two of us have spent hundreds of hours compiling the best evidence currently available on the issue of whether nonlawyers can furnish legal services with competence and integrity. Here is what we know, in brief: Consumers want legal help, including from nonlawyers.[16] And qualified nonlawyers can be competent and effective. Indeed, a battery of studies, assessing different settings, at different times, and using different metrics, finds that trained nonlawyers can perform as well as, or sometimes better than, their JD-toting counterparts.[17]

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[14] *See* Nora Freeman Engstrom, *Legal Insurance and Its Limits*, 124 MICH. L. REV. 1 (2025) (exploring the county's first experiment with legal insurance in the 1970s and arguing that, while "it is undeniably seductive to think the access-to-justice crisis can be addressed in a way that benefits lawyers . . . those who actually want to address the access-to-justice crisis need to look somewhere else").

[15] For how UPL laws restrict the provision of legal advice by courthouse personnel, see David Freeman Engstrom & Nora Freeman Engstrom, *Courthouse UPL* (forthcoming 2026). For how UPL laws impede the development of litigant-facing technology, see Engstrom & Engstrom, *supra* note 1, at 163.

[16] *See*, *e.g.*, NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: OUR RECOMMENDATIONS AFTER LISTENING TO THE LITIGANTS 29 (2016); Cayley Balser et al., *Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice*, 18 L. J. FOR SOC. JUSTICE 66, 97–100 (2024); Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 283, 289–97 (2020).

[17] *See*, *e.g.*, MARY E. MCCLYMONT, GEO. JUST. LAB, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS (2019); REBECCA L. SANDEFUR & THOMAS M. CLARKE, AM. B. FOUND., NAT'L CTR. FOR STATE CTS. & PUB. WELFARE FOUND., ROLES BEYOND LAWYERS: EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM (2016); DAVID KRAFT ET AL., FIVE YEAR REVIEW OF PARALEGAL REGULATION: RESEARCH FINDINGS. FINAL REPORT FOR THE LAW SOCIETY OF UPPER CANADA 6 (2012); HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998); Jessica K. Steinberg et al., *Judges and the Deregulation of the Lawyer's Monopoly*, 89 FORDHAM L. REV. 1315 (2021); Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in*

We briefly summarize key research on nonlawyer service providers and have attached to this comment our newly published law review article, "Unauthorized Practice: Assessing Available Evidence," which goes into much more detail on these, and other, research efforts.[18]

I. Evidence on Nonlawyer Legal Service Providers

We place the evidence on nonlawyer providers into three categories: (1) anecdotal accounts, mostly from federal agency assessments of their own nonlawyer practice; (2) rigorous empirical research comparing nonlawyers to lawyers; and (3) recent studies assessing the value of nonlawyer representation in community justice worker (CJW) and licensed legal practitioner (LLP) programs.

A. Anecdotal Agency Assessments

The most prominent area of nonlawyer practice has been, and continues to be, before federal administrative agencies.[19] We have compiled historical appraisals of nonlawyer activity which suggest that, in the following agencies, nonlawyer practice has enhanced, rather than impeded, administrative processes: the Veterans' Administration,[20] the then-Federal Security Agency,[21] the then-Interstate Commerce Commission,[22] the U.S. Patent Office,[23] the Board of Veterans' Appeals,[24] and the Social Security Administration (SSA).[25]

England and Wales, 37 LAW & SOC'Y REV. 765, 785–87 (2003); Nora Freeman Engstrom, *Effective Deregulation: A Look Under Hood of State Civil Courts*, JOTWELL, Oct. 31, 2022.

[18] Nora Freeman Engstrom & Natalie Anne Knowlton, *Unauthorized Practice: Assessing Available Evidence*, 67 B.C. L. REV. 1307 (2026).

[19] Some agencies, for example the U.S. Patent Office, have *always* permitted nonlawyer practice. *See* Sperry v. State of Fla. ex rel. Fla. Bar, 373 U.S. 379, 388 (1963) (noting that "nonlawyers have practiced before the [U.S. Patent] Office from its inception" and that this authority was formalized in 1869). The lay representation of veterans dates back to at least 1862, and nonlawyers' (primarily accountants') representation of taxpayers has a similar historical pedigree. *See, e.g.*, AM. BAR ASS'N COMM'N ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS 25 (1995); *Practice Before Government Agencies: Hearing Before Subcomm. No. 2 of the H. Comm. on the Judiciary*, 80th Cong. 85 (1948) [hereinafter 1948 Hearing] (statement of Spencer Gordon, Counsel, American Institute of Accountants) ("[A]ccountants from earliest times have been admitted to practice before the Treasury Department, and they practice there now.").

[20] ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, MONOGRAPH OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE, IN 13 PARTS, PART 2: VETERANS' ADMINISTRATION 38 (1940).

[21] 1948 Hearing, *supra* note 19, at 445–46 (statement of Maurice Collins, Acting Administrator, Federal Security Agency).

[22] *Id*. at 191, 195, 452–53 (containing statements of the ICC's then-Chairman and representatives of the Association of ICC Practitioners).

[23] Sperry v. State of Fla. ex rel. Fla. Bar, 373 U.S. 379, 403 (1963).

[24] Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 327 (1985).

[25] Jacob M. Wolf, *Nonlawyer Practice before the Social Security Administration*, 37 ADMIN. L. REV. 413, 415 (Fall 1985).

The Administrative Conference of the United States (ACUS), back in the 1980s and again very recently, has affirmed the value of nonlawyer representation and explicitly encouraged agencies to facilitate broader practice by nonlawyers in different adjudication types.[26] ACUS Recommendation 2024-7, published in late 2024, calls on agencies to (among other things) "permit nonlawyers . . . to assist participants throughout the adjudicative process" and to "encourage and expand opportunities for nonlawyer assistance through programs that authorize, educate, and/or certify individuals to provide participants with information, support, and dedicated assistance."[27]

B. Empirical Research Comparing Nonlawyers to Lawyers

On the other end of the spectrum, a more rigorous tranche of empirical research offers quantitative comparisons between nonlawyer representatives, lawyers, and pro se litigants. Here, we have evidence both from the U.S. and overseas.

1. Evidence from the United States

The first study that pits lawyers against nonlawyers was undertaken in 1933 by Charles Clark, then Dean of Yale Law School, and Emma Corstvet, at the behest of the Association of American Law Schools.[28] Exploring the question of lawyer's service to the general public and how legal needs were being met, researchers interviewed 412 individuals and 61 businesses, about half of which had at least one legal transaction in the past year.[29] Of the individuals experiencing such a transaction, 35% sought some sort of outside advice, mostly from a lawyer (86%) but some from a nonlawyer adviser (14%). Those seeking outside advice were more likely to be satisfied by the outcome, but interestingly, the individuals turning to nonlawyer advisers expressed a *higher* level of satisfaction than did those who consulted lawyers.[30]

Two additional sources come from the 1980s. At that time, Professors Donald Duquette and Sarah Ramsey sought to assess representation of children in child abuse and neglect cases, wherein a range of specially trained nonlawyer providers—including law students and lay

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[26] Nonlawyer Assistance and Representation (Recommendation No. 86-1), 51 Fed. Reg. 25641, 25641-25642 (July 16, 1986) (citations omitted). In December 2024, ACUS expanded on this and related recommendations by issuing best practices "for incorporating and increasing representation and assistance by permitting broader practice by nonlawyers in different types of adjudicative systems." Nonlawyer Assistance and Representation in Agency Adjudications (Recommendation 2024-7), 89 Fed. Reg. 106409, 106409 (Dec. 30, 2024) [hereinafter ACUS Recommendation 2024-7).

[27] ACUS Recommendation 2024-7, *supra* note 26, at 5.

[28] Charles E. Clark & Emma Corstvet, *The Lawyer and the Public: An A.A.L.S. Survey*, 47 YALE L.J. 1272 (1938).

[29] *Id*. at 1273, 1276.

[30] *Id*. at 1277–79, 1281. According to Clark and Corstvet, "[t]he reasons given for dissatisfaction with the lawyer were various: Many charged him with fraud, incompetence, delay; one that he lost the case." *Id*. at 1281.

volunteers—represented children.[31] Their work yielded two striking findings. First, trained nonlawyers significantly outperformed untrained court-appointed lawyers on various process measures (e.g., investigation, contact with child and family, advocacy) and outcomes measures (e.g., more specific court orders for treatment and assessment, quicker case resolutions, and fewer court hearings taken to resolve the case).[32] Second, although trained nonlawyers performed markedly better than untrained lawyers, they performed just as well as trained lawyers.[33]

In a major study published the following year, Zona Fairbanks Hostetler reached a similar conclusion. For this study, prepared at the behest of the Administrative Conference of the United States, Hostetler focused on the SSA and the Immigration and Naturalization Service.[34] Evaluating outcome data, she found that individuals represented by nonlawyers fared nearly as well as those represented by lawyers and, crucially, substantially better than those without representation.[35] Fortifying her quantitative results with interviews of agency officials and representatives from legal aid and social services agencies, Hostetler discovered: "[T]here is little perceived difference in the quality of help between lawyers as a class and nonlawyers as a class."[36] Interviewees further reported that "their experience indicated that nonlawyers could be trained to perform virtually all functions in administrative agency proceedings."[37]

In 1990, the State Bar of California published a series of surveys concerning "legal technicians" (nonlawyer professionals), one of which compiled the views of California consumers who had appeared in court without a lawyer.[38] Over half of the respondents (53%) reported that, although they formally appeared pro se, "someone helped them prepare their court papers."[39] Of these helpers, one-quarter had been lawyers; three-quarters had been nonlawyers.[40] The researchers found: "64% of those who received some assistance from lawyers were happy overall with the service and 67% would use a lawyer again." Interestingly, though, "of those who received assistance from a [nonlawyer] 76%"—which is to say, a higher

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[31] Donald N. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 U. MICH. J.L. REFORM 341, 351–58 (1987). The trained nonlawyers included both nonlawyer volunteers and law students.

[32] *Id*. at 342–43, 350–56, 365–66, 389.

[33] *Id*. at 362, 390 (summarizing their finding that "[n]onlawyers carefully selected and trained and under lawyer supervision performed as well as trained lawyers in representing children, and certainly performed better than lawyers without special training").

[34] These were two agencies where nonlawyers can represent individuals. Zona Fairbanks Hostetler, *Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, 2 ADMIN. L.J. 85, 87 (1988).

[35] *Id.* at 88.

[36] *Id*. at 103–04.

[37] *Id.* at 105.

[38] REPORT OF THE STATE BAR OF CAL. COMM'N ON LEGAL TECHNICIANS 14 (1990).

[39] *Id*. Exhibit 2 at 2.

[40] *Id*. at 2–3.

percentage—"were happy with the service and would use such a provider again."[41] This would suggest that California's consumers were comparatively *more* satisfied with services furnished by nonlawyer providers.

Also in the 1990s, Herbert Kritzer, a prominent political scientist and law professor, compared the effectiveness of lawyers and nonlawyers (here, qualified lay agents) in the context of four administrative settings in Wisconsin: unemployment compensation appeals, tax appeals, Social Security disability appeals, and labor grievance arbitration.[42] Through observation, outcome analysis, and supplemental interviews, Kritzer found nonlawyers to be effective in three of the four settings that he studied. He broadly concluded that "nonlawyers can be effective advocates and, in some situations, better advocates than licensed attorneys."[43]

In 2000, Elaine Tackett conducted a rigorous survey of Administrative Law Judges (ALJs) concerning representatives in the SSA.[44] She found that a slight majority of ALJs (60%) ranked nonlawyer representation as good or satisfactory, compared to 88% of ALJs who gave attorneys a passing grade.[45] When asked who furnished *better* representation, 34% said that nonlawyers outperformed lawyers, while 65% said the opposite. All told, Tackett concluded that, in the SSA, nonlawyers, "overall . . . provide competent representation," even though most ALJs also believed that lawyers furnished somewhat higher-quality services.[46]

Then, in 2017, Professors Anna Carpenter, Alyx Mark, and Colleen Shanahan studied legal representation in D.C.'s Office of Administrative Hearings (OAH).[47] Focusing on the employer side of the equation,[48] Carpenter et al. found in the aggregate that lawyer-represented employers outperformed nonlawyer-represented employers across various metrics. Lawyers were more likely to ensure client attendance at hearings, disclose and introduce documents, and present witness testimony.[49] When an unrepresented worker squared off against a lawyer-represented employer, the worker won only 47.6% of the time; the rate jumped to 67.5% when the worker squared off against a nonlawyer.[50] Yet, these disparities vanished in the subset of

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[41] *Id.* at 14.

[42] KRITZER, *supra* note 17, at 21–22.

[43] *Id*. at 100.

[44] Elaine Tackett, *Paralegal Representation of Social Security Claimants: A Study of the Perceptions of Social Security Administrative Law Judges on the Quality of Representation of Social Security Claimants by Paralegals*, 16 J. PARALEGAL EDUC. & PRAC. 67 (2000).

[45] *Id*. at 70.

[46] *Id*. at 73.

[47] Anna E. Carpenter, Alyx Mark & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 LAW & SOC. INQUIRY 1023 (2017). OAH is an administrative court that hears de novo appeals from underlying District determinations regarding a worker's qualification for unemployment benefits.

[48] That is where nonlawyers—who tended to be HR-firm employees—frequently supplied representation.

[49] Carpenter, Mark & Shanahan, *supra* note 47, at 1042.

[50] *Id.* at 1040–41.

cases where a nonlawyer representative actually *appeared* at the hearing.[51] In *those* cases, nonlawyers notched comparable win rates to their JD-toting counterparts, although, even there, nonlawyers were somewhat more constrained in the ways they challenged judges on issues of substantive law or procedure.

2. Evidence from Overseas

In the 1980s, at the request of the then-Lord Chancellor's Department, Professors Hazel Genn and Yvette Genn studied nonlawyer performance and how representatives influenced outcomes for claimants in administrative tribunals in England and Wales.[52] Drawing on over 3,700 case files and nearly 500 observed hearings, the researchers' central finding was that representation, of any kind, significantly increased claimants' odds of success.[53] To fortify their quantitative research, Genn and Genn also conducted 735 interviews; these interviews revealed that "[f]ew . . . believe that lawyers were necessarily best equipped to conduct representation in tribunals."[54]

In the late 1990s, Richard Moorhead, Avrom Sherr, and Alan Paterson took the baton and examined the differences between nonlawyers and lawyers (specifically, solicitors) in welfare benefits, debt, housing, and employment cases in England and Wales.[55] The research effort is notable for its rigor, leveraging quantitative data, an external peer-review process, and anonymous "model clients."[56] Across a broad range of measures, Moorhead et al. found that nonlawyers were not only effective but, in many respects, *outperformed lawyers*. In terms of client satisfaction, nonlawyer advisers scored slightly higher overall: 76% of nonlawyer clients rated their service as excellent or very good compared to 70% of solicitor clients, with statistically significant differences favoring nonlawyers across several dimensions such as emotional attentiveness, having enough time for them, and perceived advocacy.[57] Outcome data further supported nonlawyer effectiveness: clients of nonlawyers were more likely to obtain concrete benefits such as lump sum payments, new or increased regular payments, and the prevention of adverse third-party action.[58]

In 2011, a team of experts in England and Wales assessed the quality of 101 wills prepared by a mix of solicitors and non-solicitor providers. The findings were sobering: 25% of wills were

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[51] In many hearings, the nonlawyer, ostensibly representing the employer, never showed up. *Id.* at 1041, 1044.

[52] HAZEL GENN & YVETTE GENN, THE EFFECTIVENESS OF REPRESENTATION AT TRIBUNALS: REPORT TO THE LORD CHANCELLOR (1989).

[53] *Id*. at 7, 243.

[54] *Id*. at 245.

[55] Moorhead et al., *supra* note 17, at 777. The researchers capitalized on a rare opportunity provided by a large-scale pilot program (the Civil Nonfamily Block Contracting Pilot), which introduced a contested market between solicitors and not-for-profit nonlawyer agencies. *Id.* at 775.

[56] *Id*. at 775–82.

[57] *Id.* at 785–86.

[58] *Id.* at 786–87.

assessed as failing to meet basic quality standards. But critically, the experts found *no difference* in the failure rates; whether prepared by a solicitor or non-solicitor, quality remained constant.[59]

II. Emerging Research on the Value of Nonlawyer Service Delivery

Finally, emerging research from nascent nonlawyer provider programs in the United States is providing new insight into the value of nonlawyer legal service delivery. While these studies are necessarily limited given the early days of the programs, they are nevertheless of interest for legal policymakers looking to pursue similar approaches.

In the context of community justice worker (CJW) programs, our research compiled reports from three jurisdictions. The Alaska Legal Services Corporation's CJW program is perhaps the most well-known of its sort. During the 2022–2023 SNAP crisis in Alaska, approximately 60 CJWs were trained to take SNAP cases, expanding the reach of the then-25 staff attorneys at Alaska Legal Services. Their success rate in resolving clients' SNAP delay issues during this pilot period: 100%.[60] As of 2025, across over 1,400 cases, Alaska's CJWs have assisted clients in recovering $23.6 million in food security benefits.[61]

Authorized through the Utah legal regulatory sandbox, CJWs at the Timpanogos Legal Center helped clients seek a total of 225 domestic violence protective orders.[62] Notably, "clients receiving legal services from an advocate [were] roughly twice as likely to receive a protective order," as compared to individuals generally (who reflected a mix of lawyer-represented and self-represented individuals).[63]

In Delaware, early findings from the Qualified Tenant Advocates (QTA) program showed that across the more than 3,300 cases that closed by the end of 2025, these CJWs assisted tenant-clients in securing or preserving approximately $4.8 million in federal housing assistance.[64] Further, in 38% of these closed cases, QTAs helped tenants achieve "at least one 'substantial outcome,'" such as eviction prevention, subsidies preservation, or rent reduction.[65]

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[59] LEGAL SERVS. CONSUMER PANEL, REGULATING WILL WRITING 2–3 (2011).

[60] Joy Anderson et al., *Community Justice Workers: Part of the Solution to Alaska's Legal Deserts*, 41 ALASKA L. REV. 9, 19–20 (2024). 19–20.

[61] MATTHEW BURNETT ET AL., AM. BAR FOUND., RESEARCH BRIEF: ANALYSIS OF THE SOCIAL AND ECONOMIC IMPACT OF THE ALASKA COMMUNITY JUSTICE WORKER PROGRAM (2021-2025), at 2 (2025); Anderson et al., *supra* note 61, at 12–15.

[62] CHRISTIAN ABASTO ET AL., INCREASING ACCESS TO JUSTICE THROUGH COMMUNITY JUSTICE WORKERS: A PROPOSAL FOR CALIFORNIA 8 (2024).

[63] *Id*. at 9.

[64] JAMES TEUFEL ET AL., AM. BAR FOUND., RESEARCH BRIEF: ANALYSIS OF THE SOCIAL AND ECONOMIC IMPACT OF THE DELAWARE QUALIFIED TENANT ADVOCATES PROGRAM (2022–2025), at 3 (2026).

[65] *Id.*

Meanwhile, researchers have published four studies analyzing Licensed Legal Practitioner (LLP) programs in Washington, Minnesota, and Arizona.

Two of these studies zero in on Washington—and both paint a positive portrait.[66] Indeed, in the second Washington assessment, published in 2021, certain stakeholders that worked with LLLTs (attorneys, judges, and commissioners) reported that "LLLT work product is often higher quality and easier for the court to consume than attorney work product."[67]

Published in 2024, an interim evaluation of Minnesota's Legal Paraprofessional (LP) program (then in a pilot phase), tells a similar story. When surveyed, a majority of LP client-respondents expressed favorable views of LP's services,[68] while a majority of judicial-respondents agreed that "paraprofessionals displayed appropriate decorum in the courtroom," "were aware of applicable court rules," and "observed courtroom courtesies."[69] Notably, supervising attorneys reported being "[*v*]*ery satisfied* with the quality of work provided by paraprofessionals under their supervision, and no respondents reported being dissatisfied."[70]

A 2024 assessment of Arizona's Legal Paraprofessionals found much the same.[71] A majority of judges and attorney-respondents agreed LPs were aware of applicable rules and displayed appropriate decorum.[72] And, a narrow majority of surveyed attorneys and judges agreed "that hearings with a LP take less time than hearings with self-represented litigants" although these respondent groups also agreed that LPs "take longer in hearings than an attorney."[73]

* * *

[66] Thomas Clarke and Rebecca Sanderfur published a study in 2017, evaluating the early implementation of the program. Several years later, in 2021, the Rhode Center conducted a *post mortem* evaluation. THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 9 (2017) (finding that clients "uniformly reported that LLLTs provided competent assistance" and further that "their legal outcomes were improved by utilizing the services of LLLTs."); JASON SOLOMON & NOELLE SMITH, THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 9 (2021) (finding that clients described "overwhelmingly positive experiences with LLLTs.").

[67] SOLOMON & SMITH, *supra* note 66, at 13.

[68] STANDING COMM. FOR LEGAL PARAPRO. PILOT PROJECT, MINN. SUP. CT., FINAL REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT 8 (2024) (finding that 15 out of 17 clients were satisfied or very satisfied with the services they received, and the same number were likely or very likely to recommend LP services to their friends or family).

[69] *Id*.

[70] *Id*. at 7.

[71] Indeed, all client respondents (100%) registered satisfaction with the services they received. ARIZ. SUP. CT., ASSESSING ARIZONA'S LEGAL PARAPROFESSIONALS: 2024 PROGRAM SURVEY 22 (2024).

[72] *Id*. at 19. They also agreed that LPs could benefit from additional training on evidentiary and procedural rules. *Id*.

[73] *Id*. at 14.

Lawyers are the beating heart of the legal services ecosystem, and lawyers should remain the beating heart of the legal services ecosystem. But nonlawyers, when assisting and representing clients across a range of legal domains, consistently provide competent, and often high-quality, assistance.

Nonlawyer Ownership of Law Firms

Unauthorized practice rules are one pillar of the regulatory framework that supports the expansive lawyer monopoly over legal services. The second pillar is Rule 5.4—the provision that prohibits lawyers from sharing fees or co-owning an entity with nonlawyers if any aspect of the underlying activity constitutes the practice of law.[74] Rule 5.4 prevents lawyers from practicing law through corporate entities—and also keeps lawyers from seeking funding from outside entities that could support the development of new technology solutions or drive other innovations. As a result, law has not benefited from the technological, financial, and service innovations that have transformed nearly every other industry.

Just as states have experimented with new models of legal service delivery, two states—Arizona and Utah—have experimented with changes to Rule 5.4.[75] In 2020, Arizona did away with restrictions on who may own law firms, establishing a licensure program for nonlawyer-owned providers—dubbed alternative business structures (ABSs). Arizona's reforms also did away with fee-sharing between lawyers and nonlawyers across the state. Utah, for its part, initially authorized nonlawyer ownership and relaxed UPL restrictions on who (nonlawyers) and what (software) may practice law by creating a legal regulatory "sandbox" and then granting what amount to waivers of one or both rules to entrants.[76]

In 2022, the Rhode Center published a first-of-its-kind empirical study on the Arizona and Utah programs: *Legal Innovation After Reform: Evidence from Regulatory Change*.[77] The research sought to answer two primary questions:

- What types of innovations in legal service delivery models do these reform approaches generate?

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[74] *See supra* note 13.

[75] While the traditional regulatory approach for legal services focuses on the individual provider of the service (the lawyer or, in some states, the authorized nonlawyer provider), entity regulation extends regulatory authority to the organization providing legal services, in addition to the authorized providers within it.

[76] Effective early 2025, however, the Utah Supreme Court ended the "ABS-only" portion of the sandbox, drastically reducing the number of authorized entities. Only six entities remain as of March 1, 2026. *Innovation Office Metrics*, UTAH OFF. OF LEGAL SERV. INNOVATION, https://utahinnovationoffice.org/innovation-office-metrics/ (last visited Mar. 1, 2026).

[77] DAVID FREEMAN ENGSTROM ET AL., DEBORAH L. RHODE CTR. ON THE LEGAL PRO., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE (2022), https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf.

- Who is served by these innovations?

At the two-year mark, the returns were broadly encouraging. A wide variety of legal innovations had entered the marketplace, spanning a range of legal areas and delivery models, and these innovations were predominantly serving individual consumers, thus achieving a clear aim of reformers.

In June 2025, the Rhode Center released an updated report titled *Legal Innovation After Reform: Five Years of Data on Regulatory Change.*[78] Here, we found that liberalized rules were spurring innovations across many different organizational forms, including traditional law firms; corporate-owned "law companies," such as LegalZoom and other "legal tech" providers; "non-law companies" that have added legal services to complement their non-law service offerings; and "intermediaries" that match clients with legal service providers.[79] And also, encouragingly, we found that publicly available information on consumer complaints and disciplinary actions in Arizona and Utah demonstrated little to no evidence of consumer harm.[80]

Closing

We applaud the Supreme Court of Tennessee for its broad inquiry into opportunities to rethink legal services regulation and move the legal services sector toward a more accessible, affordable, and equitable future.

Sincerely,

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[78] DAVID FREEMAN ENGSTROM ET AL., DEBORAH L. RHODE CTR. ON THE LEGAL PRO., LEGAL INNOVATION AFTER REFORM: FIVE YEARS OF DATA ON REGULATORY CHANGE (2025), https://law.stanford.edu/wp-content/uploads/2025/06/SLS_CLP_LegalInnovation_REPORT_v5.pdf.

[79] *Id*. at 20–26.

[80] *Id*. at 32–33.

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Attachment

UNAUTHORIZED PRACTICE: ASSESSING AVAILABLE EVIDENCE

NORA FREEMAN ENGSTROM
NATALIE ANNE KNOWLTON

UNAUTHORIZED PRACTICE: ASSESSING AVAILABLE EVIDENCE

NORA FREEMAN ENGSTROM*
NATALIE ANNE KNOWLTON**

Abstract: A debate is now raging concerning whether to relax the rules that govern the provision of legal services, to welcome nonlawyers into the fold. In recent years, roughly a dozen states have taken precisely this step, seeking to expand access to those currently priced out of the legal services marketplace. But in other places, reform efforts have stalled, derailed by claims that lawyers—and lawyers alone—have the training, education, and experience to supply high-quality assistance.

The stakes of this debate are sky high: The legal profession is large and influential, courts are crucial, and the access-to-justice crisis at issue—the problem that has set states' reform efforts in motion—is staggering. But the debate, itself, backstops on a question that is surprisingly straightforward: Can nonlawyers furnish legal services with competence and integrity? Or alternatively, to navigate our labyrinthian legal system, must one have comprehensive know-how of the kind only licensed lawyers possess?

Wading into this debate, we compile the best evidence currently available. After canvassing nearly a century of research conducted at different times, in different places, and using a wide array of methodologies, we conclude that specially trained nonlawyers can, indeed, supply high-quality help. The notion that having a law degree is a necessary predicate to offering legal services with "integrity and competence" may be well ingrained. And, for those of us in the legal profession, it is surely convenient and comforting. But it is an idea that, when empirically tested, simply does not hold up.

INTRODUCTION

Texas, recently, was on the cusp of fundamental change. The change at issue? The Lone Star State was on the verge of permitting "paraprofessionals to represent and assist low-income Texans" with certain matters in certain areas

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We are immensely grateful to Matt Brundage and Lucy Ricca for their invaluable input and analysis. We are additionally grateful to Herbert Kritzer and the Rhode Center Civil Justice Fellows for their thoughtful feedback on previous drafts.

of the law.[1] The effort began on October 24, 2022, when the Texas Supreme Court, alarmed by a rising tide of self-represented litigants, asked a Working Group to come up with a responsible way to authorize nonlawyer practice.[2] The Working Group seized the baton and got to work. By December 2023, it had put the finishing touches on a detailed and nuanced plan, and by August of the following year, the Supreme Court seemed ready to enact the proposal.[3]

Yet, there was a catch. Even as the reform was moving forward, a blizzard of blistering comments was pouring in, questioning the notion that nonlawyers could provide high-quality assistance. "The complexity of our legal system," one commenter summarized, "demands the comprehensive education and skills that only licensed lawyers possess."[4] "[N]on-lawyers," another sniffed, would provide mere "pseudo-representation"—a vastly inferior lawyer lite.[5] Critics' claims, essentially, were that the relaxation of the lawyer monopoly might be well-intentioned but would ultimately backfire, perversely hurting the very people reformers were seeking to assist.[6] Ultimately, in the face of this sharp resistance, the paraprofessional idea in Texas was, at least temporarily, shelved.[7]

This Article essentially picks up where that story lets off. It interrogates the claims of the above critics—and it does so because this basic story is playing out, not just in the Lone Star State, but across the country.

Back in 2022, the Texas Supreme Court convened its Working Group because Texas—like other states—is confronting a justice gap that is sizable and scandalous. These days, only about a quarter of cases see lawyers on both sides; three-quarters of the time, at least one side is unrepresented, a significant

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[1] REPORT AND RECOMMENDATIONS OF THE TEXAS ACCESS TO LEGAL SERVICES WORKING GROUP 1 (2023).

[2] Letter from Brett Busby, Just., Tex. Sup. Ct., to Harriet Miers, Chair, Tex. Access to Just. Comm'n (Oct. 24, 2022), https://texasatj.org/wp-content/uploads/2025/03/Materials-Jan-30-Working-Group.pdf [perma.cc/DDS8-LE85].

[3] Preliminary Approval of Rules Governing Licensed Legal Paraprofessionals and Licensed Court-Access Assistants, No. 24-9050, 2024 Tex. LEXIS 633, at 1–4 (Tex. Aug. 6, 2024).

[4] Written Comments Submitted to the Texas Access to Justice Commission Access to Legal Services Working Group, at 11, TEX. ACCESS TO JUST. COMM'N (Apr. 2, 2024), https://texasatj.org/wp-content/uploads/2025/03/ALL-Written-Public-Comments_April-2-Update.pdf [perma.cc/GRY4-UBW3].

[5] *Id.* at 37.

[6] As one commenter ominously put it: To relax the existing regulatory scheme would "play[] into the hands of people who already take advantage of the poor." *Id.* at 61.

[7] Ryan Autullo, *Texas Pauses Rules Permitting Limited Paralegal Legal Services*, BLOOMBERG L. (Jan. 24, 2025), https://news.bloomberglaw.com/litigation/texas-pauses-rules-permitting-limited-paralegal-legal-services [perma.cc/3E3H-Q6SS]; Ryan Autullo, *Texas Lawmakers Warn Court on Paralegal Services 'Grave Mistake*,*'* BLOOMBERG L. (Feb. 25, 2025), https://news.bloomberglaw.com/litigation/texas-lawmakers-warn-court-on-paralegal-services-grave-mistake [perma.cc/R5PW-RQDC].

uptick from prior decades.[8] This onslaught of pro se representation has costs. As compared to represented individuals, unrepresented individuals require more judicial hand-holding (which takes time) and are also far more likely to lose, which means that, frequently, "deficiencies in procedure—not the merits of a case—drive outcomes."[9] This, in turn, fuels a pernicious perception that law "applies not to all and not equally, as promised, but only to people of means," which, some believe, "threatens the integrity of the rule of law itself."[10]

Worse, those pro se litigants—the folks we see in courts around the country—are only a relatively small part of the story. They are eclipsed by the tens of millions of additional Americans we do not see because, although they may be confronting a significant legal problem—and although they may well have a valid entitlement to relief under the formal law—they are taking no steps to protect their interests.[11] This inaction has both direct and cascading consequences: A person who cannot vindicate her rights to overtime pay, workers' compensation benefits, or child support obviously suffers economically. And, when laws are not enforced, the cost of disobedience drops.[12]

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[8] PAULA HANNAFORD-AGOR, SCOTT GRAVES & SHELLEY SPACEK MILLER, NAT'L CTR. FOR STATE CTS., CIVIL JUSTICE INITIATIVE: THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31 (2015) [hereinafter CIVIL LANDSCAPE REPORT] (noting that "the average percentage of cases in which both sides were represented by counsel was only 24 percent"); FAM. JUST. INITIATIVE, THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS 20 (2018) (finding that both the petitioner and respondent in divorce and separation cases were represented in 20% of cases). For data supporting the finding that these statistics represent a significant uptick from prior decades, see D.C. CTS., DISTRICT OF COLUMBIA COURTS CIVIL LEGAL REGULATORY REFORM TASK FORCE REPORT 9 (2025) [hereinafter D.C. TASK FORCE REPORT]; Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. ONLINE 146, 150 (2024), https://www.stanfordlawreview.org/online/the-making-of-the-a2j-crisis/ [perma.cc/3VFA-LMRN]. For a helpful compilation of additional evidence, see Judith Resnik et al., *Lawyerless Litigants, Filing Fees, Transaction Costs, and the Federal Courts: Learning from SCALES*, 119 NW. U. L. REV. 109, 111 n.3 (2024). In federal courts, one-fourth of plaintiffs navigate the system without lawyer assistance, as do half of those litigants seeking appellate review. *Id.* at 110–11.

[9] GA. SUP. CT. STUDY COMM. ON LEGAL REGUL. REFORM, REPORT AND RECOMMENDATIONS 17 (2025) [hereinafter GEORGIA REPORT] (quoting AM. ACAD. OF ARTS & SCIS., ACHIEVING CIVIL JUSTICE: A FRAMEWORK FOR COLLABORATION 28 (2024), https://www.amacad.org/sites/default/files/publication/downloads/2024_achieving-civil-justice.pdf [perma.cc/BUZ7-FH7D]). For further discussion of the long odds self-represented litigants face, see *infra* note 340.

[10] *Closing the Justice Gap: How to Make the Civil Justice System Accessible to All Americans: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. 3 (2024) (statement of Hon. Nathan L. Hecht, C.J., Sup. Ct. of Tex.) [hereinafter *Closing the Justice Gap Hearings*]; *see also* GEORGIA REPORT, *supra* note 9, at 17 ("[Self-representation] can lead to a decrease in trust of the justice system, as people feel that they do not even have a chance at a fair outcome, which can harm the system's legitimacy.").

[11] *See* LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 8 (2022) (reporting that low-income Americans "do not get any or enough legal help for 92% of the problems that have had a substantial impact on them").

[12] *E.g.*, James M. Anderson, Maya Buenaventura, Amy Mahler & Nicholas M. Pace, *Empirical Tort Law (and Theory)—An Essay in Honor of Deborah Hensler*, 17 J. TORT L. 97 (2024) (tracing the dismal consequences that follow from would-be tort plaintiffs' failure to vindicate their rights).

When individuals are on the receiving end of a lawsuit, the story is similar. Many would-be defendants also take no action, and this failure to act frequently results in default judgments.[13] In some areas and for some kinds of claims (chiefly debt collection), default judgment rates approach or even exceed ninety percent.[14] A substantial portion of these default judgments are undeserved, meaning that the underlying claim was invalid.[15] Once these judgments issue, they frequently kick off their own grim spiral of wage garnishments and home evictions.[16]

What explains this?[17] The simplest answer is that even relatively inexperienced lawyers cost roughly $300 per hour, far more than many people can afford.[18] People do not hire lawyers because lawyers are too expensive to be hired.[19] Then, although some free or subsidized legal help is theoretically available, only individuals below certain poverty thresholds tend to be eligible, and, of those who *are* eligible, half are turned away.[20] Legal aid organizations

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[13] *See* DAVID FREEMAN ENGSTROM ET AL., A BLUEPRINT FOR EXPANDING ACCESS TO JUSTICE IN LOS ANGELES SUPERIOR COURT'S EVICTION DOCKET 8 (2025) ("In consumer debt collection cases, multiple jurisdictions report default-judgment rates as high as 90-95%. In eviction, default-judgment rates range widely but several jurisdictions report rates from 20-40%.") (citations omitted).

[14] *Id.*

[15] *Id.* at 8–9 (detailing the prevalence of "unjust resolution[s]," including debt collection judgments that "involve[e] debts that were paid off, never incurred, inflated, time-barred, or discharged in bankruptcy"); Theodora Worledge et al., *AI Assistance for Court Review of Default Judgments* 2 (AI for Access to Just., Disp. Resol., and Data Access 2025 Workshop, Working Paper No. 20, 2025) (on file with author) (finding, in an audit of a sample of 100 debt collection cases from one county court, that "15% of the cases contained significant errors that should have prevented default judgment" and "44% of the cases contained errors that should have at least resulted in amended petitions").

[16] For the fact that default judgments often result in wage garnishments, see FREDERICK F. WHERRY & HANNAH HILL, DEBT COLLECTION LAB, HOW STATE POLICIES AFFECT COURT JUDGMENTS IN DEBT COLLECTION LAWSUITS: A COMPARATIVE STUDY ACROSS FOUR STATES 7 (2024); *see also* HAZEL GENN, PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW 35 (1999) ("Certain types of situations can have a cascade effect. For example, threatened repossession of the family home can lead to marital strain and breakdown, mental health problems, leading to difficulties at work and problems in caring for children.").

[17] For a deeper dive into this "why?" question, see generally Engstrom & Engstrom, *supra* note 8 (exploring the origins of the access to justice crisis).

[18] *See* Nora Freeman Engstrom & James Stone, *Auto Clubs and the Lost Origins of the Access-to-Justice Crisis*, 134 YALE L.J. 123, 182–83 (2024) (discussing additional challenges). For the $300 per hour figure, see CIV. DIV., U.S. ATT'Y OFF. FOR D.C., ATTORNEY'S FEES MATRIX—2015–2021.

[19] *See* Engstrom & Engstrom, *supra* note 8, at 156 ("When asked why they are representing themselves, pro se litigants don't typically highlight their distrust of lawyers; they more often point to economic necessity."); Gillian K. Hadfield, *Legal Markets*, 60 J. ECON. LIT. 1264, 1291 (2022) ("The principal reason that so few individuals and small businesses avail themselves of legal services is cost and availability."). Some people, of course, refrain from hiring lawyers for noneconomic reasons. *See, e.g.*, Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1266–68 (2016).

[20] LEGAL SERVS. CORP., *supra* note 11, at 9 (explaining that "LSC-funded organizations do not have enough resources to meet" individuals' demand for services and, as a result, one in two otherwise-eligible Americans who actually seek help are turned away).

simply do not have the resources they need to supply assistance to the millions of Americans who need—and actually seek—help.

Legal services are so expensive, in part, because a person who has a problem and wants help for that problem must get that help from a fully licensed lawyer. And *that* is because, except in discrete areas which we will detail below, unauthorized practice of law (UPL) rules restrict anyone who is not a lawyer from providing legal assistance. These laws tend to be both vague and capacious.[21] For instance, in 1996, in *Darby v. Mississippi State Board of Bar Admissions*, the Mississippi Supreme Court explained that "any exercise of intelligent choice in advising another of his legal rights and duties brings the activity within the practice of the legal profession."[22] Or, in Arizona, legal assistance is defined as any "act[], whether performed in court or in the law office, which lawyers customarily have carried on from day to day."[23] Under these definitions, even if a person wants help doing something simple—filling out a court form, for example—that help must come from a full JD. A nonlawyer who lends a hand is subject to criminal prosecution.[24]

These UPL laws extend not just horizontally, but also vertically, meaning that they apply, not just to "regular" nonlawyers, but also to others, including courthouse staff and technology providers. So, these laws not only restrict a person's ability to seek assistance from a neighbor, friend, social worker, or community center; they also restrict courthouse clerks' ability to supply advice or answer litigants' questions, and they simultaneously stunt the invention and development of litigant-facing technology.[25]

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[21] As Justice Douglas lamented as far back as 1967: "The line that marks the area into which the layman may not step except at his peril is not clear." Hackin v. Arizona, 389 U.S. 143, 150 (1967) (Douglas, J., dissenting). More recently, Justice Gorsuch observed that "the definitions states have adopted, usually at the behest of local bar associations, are often breathtakingly broad and opaque." Neil M. Gorsuch, *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 JUDICATURE 46, 48 (2016). For further discussion, see Bruce A. Green, *Should State Trial Courts Become Laboratories of UPL Reform?*, 92 FORDHAM L. REV. 1285, 1289 (2024). *See generally* Lauren Sudeall, *The Overreach of Limits on 'Legal Advice*,*'* 131 YALE L.J.F. 637, 637 (2022) (discussing the unnecessarily broad definitions of "legal advice").

[22] 185 So. 2d 684, 687 (Miss. 1966) (citing Or. State Bar v. Sec. Escrows, Inc., 377 P.2d 334 (Or. 1962)).

[23] State Bar of Ariz. v. Ariz. Land Title & Tr. Co., 366 P.2d 1, 9 (Ariz. 1961).

[24] *See, e.g.*, N.Y. JUD. LAW §§ 485, 486 (McKinney 2026) (establishing that certain UPL violations are misdemeanors, while others are felonies); *see also* Drew A. Swank, *Non-Attorney Social Security Disability Representatives and the Unauthorized Practice of Law*, 36 S. ILL. U. L.J. 223, 227 (2012) (cataloging additional penalties).

[25] For how UPL laws impede the development of litigant-facing technology, see Engstrom & Engstrom, *supra* note 8, at 163. For how UPL laws restrict the provision of legal advice by courthouse personnel, see generally David Freeman Engstrom & Nora Freeman Engstrom, *Courthouse UPL* (forthcoming 2026) (on file with authors).

This impoverished ecosystem contrasts sharply with the medical field.[26] There, patients can choose between a range of providers, including MDs *or* optometrists, podiatrists, registered nurses, nurse practitioners, physician's assistants, chiropractors, physical therapists, and midwives. Each of these providers is trained; each is licensed; and each is authorized to deliver medical services within the bounds of his or her licensure.[27] Some of these practitioners (e.g., registered nurses) need to be supervised by physicians.[28] Others do not. In the majority of states, for example, nurse practitioners have full practice authority, meaning that they can diagnose patients, order and interpret diagnostic tests, and initiate and manage treatments—no supervision necessary.[29] In law, by contrast, the closest analog is the paralegal, but paralegals need to be directly supervised by an attorney,[30] and, even when supervised, are restricted in what they can do or say.[31]

Now suddenly, however, this impoverished landscape is in flux. In recent years, state regulators—seeking to "level the playing field for those who have no access to justice"—have started to relax UPL laws to welcome qualified nonlawyers into the fold.[32] That, of course, is what the Texas Working Group was proposing, and, in advocating this reform, that Working Group was not alone. Over the past five years, nearly a dozen states, from all corners of the

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[26] As Gillian Hadfield has observed: "[I]f medical care were regulated in the manner of legal services, it would be illegal for anyone other than a licensed physician to deliver any form of medical care, from drawing a blood sample to performing neurosurgery." Hadfield, *supra* note 19, at 1276.

[27] *See* Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1265–72 (2023). *See generally* Philip G. Peters, Jr., *Lessons from Medicine's Experiment with Nurse Practitioners and Physician Assistants* (exploring lessons from medicine's experiment with mid-level health care providers), *in* RETHINKING THE LAWYERS' MONOPOLY: ACCESS TO JUSTICE AND THE FUTURE OF LEGAL SERVICES 226 (David Freeman Engstrom & Nora Freeman Engstrom eds., 2025).

[28] *See, e.g.*, WASH. REV. CODE § 18.79.260(2) (2025) ("A registered nurse may, at or under the general direction of a licensed physician . . . administer medications, treatments, tests, and inoculations . . . whether or not a degree of independent judgment and skill is required.").

[29] *See* Engstrom & Stone, *supra* note 18, at 129 n.12. Importantly, "[t]here exists significant evidence that, even when 'unsupervised,' nurse practitioners furnish high-quality care—and, in some instances, the quality of care they provide actually eclipses that furnished by primary-care physicians." *Id.*

[30] *See* MODEL RULES OF PRO. CONDUCT r. 5.3; Douglas R. Richmond, *Watching Over, Watching Out: Lawyers' Responsibilities for Nonlawyer Assistants*, 61 U. KAN. L. REV. 441, 447 (2012).

[31] According to the New York City Bar Association: "Paralegals are not allowed to handle any tasks that require the exercise of professional legal judgment. Therefore, paralegals are only authorized to perform ministerial tasks." COMM. ON PRO. RESP., PROHIBITIONS ON NONLAWYER PRACTICE: AN OVERVIEW AND PRELIMINARY ASSESSMENT 13–14 (1995) (citation omitted).

[32] Deno G. Himonas & Tyler J. Hubbard, *Democratizing the Rule of Law*, 16 STAN. J.C.R. & C.L. 261, 263 (2020). In addition to UPL reform, states have also considered—or are actively considering—a relaxation of Rule 5.4 in order to permit lawyers to practice through corporate entities and obtain outside investment. *See* DAVID FREEMAN ENGSTROM, NATALIE KNOWLTON & LUCY RICCA, LEGAL INNOVATION AFTER REFORM: FIVE YEARS OF DATA ON REGULATORY CHANGE 12–15 (2025) (exploring reforms undertaken in Arizona and Utah).

country and from both sides of the political divide, have taken steps to expand the range of who can deliver certain legal services,[33] while, in additional states, change appears to be in the offing.[34] Thus, it is fair to say that the legal profession is on the cusp of the greatest change it has seen in roughly a century.

Predictably, however, not everyone applauds these developments. Just as in Texas, critics insist that the relaxation of UPL rules will unleash all manner of trouble. The rules' relaxation, critics warn, will create a "two-tiered market for legal services whereby only the monied" will be able to retain lawyers, while others will be condemned to a vastly inferior alternative.[35] Critics doubt that *any* matter is simple enough to be entrusted to "untrained individuals."[36] And critics fret that, without robust UPL protection, "vulnerable" consumers will inevitably fall prey to "unqualified and unscrupulous"[37] "opportunists"

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[33] Arizona, Colorado, Minnesota, New Hampshire, Oregon, Utah, and Washington now allow licensed nonlawyers to provide legal services in at least certain case types (for example, family, housing, etc.). Alaska, Arizona, Delaware, Hawaii, Minnesota, Montana, South Carolina, Utah, Washington, and Washington D.C. have community justice worker (CJW) programs focused on meeting limited legal needs of low-income individuals. DEBORAH L. RHODE CTR. ON THE LEGAL PRO., RETHINKING REGULATION OF LEGAL SERVICES: AUTHORIZING COMMUNITY JUSTICE WORKERS 2–5 (2024); ENGSTROM ET AL., *supra* note 32, at 9–12; Proposal to Adopt Rules Authorizing Certified Lay Advocates to Provide Limited Legal Services in Certain Courts, No. AF 11-0765 (Mont. Mar. 27, 2026), https://assets.frontlinejustice.org/msc-order-authorizing-cjw-program.pdf [perma.cc/Y976-S4EV; Order No. M293-26 (D.C. Feb. 5, 2026), https://iprsoftwaremedia.com/364/files/20261/ORD%20M293-26%20Promulgating%20CLRRTF%20proposal_02.2026.pdf [perma.cc/4TP7-Q8BQ]. For further discussion, see *infra* Part I.B.2.

[34] For instance, in California, a coalition of organizations has developed a proposal for CJWs to work within state legal aid organizations. *See generally* LEGAL AID ASS'N OF CAL. ET AL., INCREASING ACCESS TO JUSTICE THROUGH COMMUNITY JUSTICE WORKERS: A PROPOSAL FOR CALIFORNIA (2024). In Georgia, a committee convened by the Supreme Court of Georgia recently issued a report calling for "a phased pilot program that would permit non-attorneys to perform certain limited legal tasks in specific types of cases." GEORGIA REPORT, *supra* note 9, at 6. The Conference of Chief Justices/Conference of State Court Administrators and the American Bar Association House of Delegates released resolutions encouraging states to support and study justice worker programs. CONF. OF C.J.S & CONF. OF STATE CT. ADM'RS, RESOLUTION 1-2025 IN SUPPORT OF EXPLORING ACCESS TO JUSTICE THROUGH AUTHORIZED JUSTICE PRACTITIONER PROGRAMS 1 (2025); A.B.A. STANDING COMM. ON LEGAL AID & INDIGENT DEF. ET AL., REPORT TO THE HOUSE OF DELEGATES 605, at 1 (2025).

[35] Lisa H. Nicholson, *Access to Justice Requires Access to Attorneys: Restrictions on the Practice of Law Serve a Societal Purpose*, 82 FORDHAM L. REV. 2761, 2771 (2014); *see also* Danny Abir, *Ulterior Motive Behind Push for New Legal Service Models?*, DAILY J. (Oct. 22, 2021), https://www.dailyjournal.com/articles/364736-ulterior-motive-behind-push-for-new-legal-service-models [perma.cc/55GV-YV7E].

[36] Danny Abir, *Nonlawyers Practicing Law*, ADVOCATE MAG. (Nov. 2023) https://www.advocatemagazine.com/article/2023-november/nonlawyers-practicing-law [perma.cc/4TMK-WSJF]; *see also* James Podgers, *Legal Profession Faces Rising Tide of Non-Lawyer Practice*, 30 ARIZ. ATT'Y 24, 27 (1994) (quoting California state bar president P. Terry Anderlini: "People don't show up with a nice, simple legal problem in a small neat box. They usually show up with a legal problem with one or two cans tied on its tail.").

[37] Reply Brief for Appellant at 28, Upsolve, Inc. v. James, 155 F.4th 133 (2d Cir. Feb. 8, 2023) (No. 22-1345).

who will "swarm" into the marketplace "with little regard for the ultimate harm they may inflict upon an unsuspecting public."[38]

These punches are landing, and, as in Texas, some moves to relax UPL laws are sputtering, as policymakers worry that the expansion of nonlawyers' activities will backfire and imperil the public, just as critics predict.[39]

This all means that a debate is now raging about whether to relax the rules governing the provision of legal services, and, in this debate, the question of whether nonlawyers can offer high-quality help looms large. UPL laws exist, it is said, to protect consumers from "unqualified and incompetent practitioners."[40] These laws rest on the premise that "[o]nly attorneys possess the education, training, experience, accountability and professional discipline necessary to provide effective legal services."[41] If, however, nonlawyers are *not* necessarily "unqualified and incompetent"—if nonlawyers *can* "provide effective legal services"—the justification for UPL laws, in their absolute form, fades.

This Article seeks to adjudicate this consequential debate. To do so, we compile and analyze the best evidence available on nonlawyer providers—amassing, by far, the most such evidence ever assembled. Ultimately, after sifting through dozens of studies and thousands of pages of records and testimony, we conclude that specially trained nonlawyers can, indeed, supply competent legal assistance across many domains.

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[38] Francis A. Brown, *The Unauthorized Practice of Law*, 14 ME. L. REV. 47, 51 (1962). Some critics also worry that nonlawyer providers will not be subject to ethics rules, apparently unaware that a state could subject licensed nonlawyers to existing ethics rules or adapt various provisions to ensure adequate oversight.

[39] Most recently, bold efforts to relax UPL laws in California and Florida fizzled. For California, see Mary Catherine Tiernan, Comment, *All That Is Golden Does Not Glitter: A Proposed Pilot Program for Increasing Access to Justice in California in the Face of Legislative Resistance*, 50 W. ST. L. REV. 89, 99–103 (2023). For Florida, see Letter from Michael G. Tanner, President, Fla. Bar, to Charles T. Canady, C.J., Sup. Ct. of Fla., at 10 (Dec. 29, 2021) [hereinafter Tanner Letter]. Likewise, in 2021, the Illinois Supreme Court put a reform on the back burner, in the face of lawyer resistance. *CBA/CBF Task Force on the Sustainable Practice of Law & Innovation*, CHI. BAR FOUND., https://chicagobarfoundation.org/advocacy/cba-cbf-task-force-on-the-sustainable-practice-of-law-innovation/ [perma.cc/GEN8-767Q]; Letter from Dennis J. Orsey, President, Ill. State Bar Ass'n, to E. Lynn Grayson & Hon. Mary Anne Mason, Co-Chairs, CBA/CBF Task Force on the Sustainable Prac. of L. & Innovation (Aug. 20, 2020).

[40] *See* Matthew Longobardi, *Unauthorized Practice of Law and Meaningful Access to the Courts: Is Law Too Important to Be Left to Lawyers?*, 35 CARDOZO L. REV. 2043, 2048–49 (2014) ("Several different rationales have been put forward in defense of UPL rules, but the main justification is that UPL prohibitions protect consumers from unqualified and incompetent practitioners.") (citations omitted); MODEL CODE OF PRO. RESP. Canon 3 (A.B.A. 1980) (declaring that "[t]he prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence"); Donald T. Weckstein, *Limitations on the Right to Counsel: The Unauthorized Practice of Law*, 1978 UTAH L. REV. 649, 650 ("The most frequently stated purpose of prohibiting non-lawyers from practicing law is to protect the public from incompetent and unethical performance . . . ."); *see also infra* notes 57–59 (compiling additional justifications).

[41] Mike France, *Bar Chiefs Protect the Guild*, NAT'L L.J., Aug. 7, 1995, at A27, A28 (quoting a letter from Thomas Curtin, President of the New Jersey Bar Association).

The remainder of this Article unfolds in three Parts. Part I offers historical context.[42] We detail the organized bar's Depression-era campaign to create a lawyer monopoly,[43] detail the scattered UPL carve-outs that have long existed,[44] and then inventory the new nonlawyer programs sweeping across the states.[45]

Part II catalogs nearly a century of research that assesses the work of nonlawyer providers.[46] Spanning different areas of law, in different types of tribunals, using different metrics, and deploying different methodologies, this research shows that knowledgeable and specially trained nonlawyers can provide effective legal services. Indeed, in some instances, the services nonlawyers supply surpass the services provided by full JDs.

Part III then pivots to offer five lessons from the above analysis, at varying levels of abstraction.[47] First and most obviously: We show that the existing empirical evidence runs counter to the notion that "[o]nly attorneys possess the education, training, experience, accountability and professional discipline necessary to provide effective legal services."[48] A lawyer monopoly on legal services is simply not necessary to serve the public interest.

Second, we draw on the assembled evidence to offer specific takeaways for those who are actually *creating* licensed paraprofessional programs and trying to define practice areas, prerequisites, and regulatory requirements that will govern these individuals' entry.[49]

Third, and abstracting out, we argue that, although trained nonlawyers stack up quite well when pitted against their JD-toting counterparts, that head-to-head matchup gets it wrong—and actually gets it wrong in at least two respects.[50] Most obviously, given the stark statistics above, the choice is not lawyer versus nonlawyer.[51] The *real choice*, for millions of Americans, is having the help of a nonlawyer versus going it alone, and there is not a shred of evidence that a person is better off proceeding pro se, as opposed to proceeding with the help of a trained, specialized professional.[52]

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[42] *See infra* notes 62–153 and accompanying text.

[43] *See infra* notes 64–77 and accompanying text.

[44] *See infra* notes 78–125 and accompanying text.

[45] *See infra* notes 126–153 and accompanying text.

[46] *See infra* notes 154–303 and accompanying text.

[47] *See infra* notes 304–356 and accompanying text.

[48] France, *supra* note 41, at A27, A28 (quoting New Jersey Bar Association president); *see infra* notes 310–328 and accompanying text.

[49] *See infra* notes 329–336 and accompanying text.

[50] *See infra* notes 337–347 and accompanying text.

[51] *See* CIVIL LANDSCAPE REPORT, *supra* note 8, at 31 (reporting that, in roughly 75% of civil cases, at least one side is self-represented).

[52] *See infra* note 340 (compiling evidence). Some challenge this idea, insisting that individuals represented by nonlawyers get the worst of both worlds, as they are not given quality representation and they are simultaneously deprived of the courtesies judges extend to self-represented litigants. We

Meanwhile, the current debate about lawyers versus nonlawyers is also misdirected, as it has become myopically quality-centric. Here we mean: Even *if* lawyers *were* superior to nonlawyers along the quality dimension—even if, with the help of a lawyer, as opposed to a trained nonlawyer, one was more likely to prevail or walk away with a sense of satisfaction and accomplishment—that would not tell us whether UPL laws ought to exist in their current form. Generally, when comparing goods and services, one does not look exclusively at "quality," and certainly in the regulation of various goods and services regulators do not outlaw the purchase of anything but the AAA option. Not all cars must be Cadillacs. Not all watches must be Rolexes. Not all medical consults must be with America's Top Docs. Rational consumers, instead, compare (and are permitted to compare) the quality of a purchase alongside a range of other attributes, including availability, convenience, comfort, and cost. It is bizarre to suggest that, in this realm and this realm only, quality ought to matter to the exclusion of all other variables.[53]

Fourth, we move beyond the evidence to an argument about how evidence ought to be deployed in the regulation of legal services.[54] In particular: Who bears the burden of proving what works? Should the burden of proof always and inevitably be on those who support reform? Or, should the burden sometimes fall on those who want to maintain the lawyer-created monopoly?[55]

Last but not least, we end with a plea regarding evidence—and the need for it.[56] UPL restrictions, their champions and critics agree, rest on "one basic . . . premise."[57] That premise is that "the public is best served when only [law-

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are not convinced. This argument relies on two shaky predicates. It assumes (1) that nonlawyers provide shoddy representation (and our findings rebut that idea), and (2) that judges are solicitous of self-represented litigants (and many judges are not). Indeed, a growing body of research suggests that judges tend to view pro se litigants with suspicion. *E.g.*, Kathryn M. Kroeper et al., *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, 26 PSYCH. PUB. POL'Y & L. 198, 209 (2020) (finding, in the context of a divorce case, that judges and attorney-mediators "devalue the case merit of pro se parties"); Victor D. Quintanilla, Rachel A. Allen & Edward R. Hirt, *The Signaling Effect of* Pro Se *Status*, 42 LAW & SOC. INQUIRY 1091, 1116 (2017) (finding in the federal civil rights context, that "law-trained individuals steeply discounted the value of the unrepresented litigant's claim at virtually every dispute stage" so that pro se litigants "obtained smaller settlement awards and diminished material outcomes"); *accord* Adam Liptak, *An Exit Interview with a Judicial Firebrand*, N.Y. TIMES, Sep. 11, 2017, at A18 (quoting Judge Richard Posner as stating that "most judges regard these people [self-represented litigants] as kind of trash not worth the time of a federal judge").

[53] The notion is doubly bizarre given the slipperiness of "quality" when it comes to legal services. For discussion, see *infra* notes 164–166 and accompanying text.

[54] *See infra* notes 348–350 and accompanying text.

[55] *Accord* Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 MINN. L. REV. 1115, 1117–18 (2000) (questioning why reformers bear the burden of proof).

[56] *See infra* notes 351–357 and accompanying text.

[57] Michael L. Rigsby, *Virginia: The Unauthorized Practice of Law Experience*, 19 U. RICH. L. REV. 499, 512 (1985).

yers] properly trained in law and licensed by the state are permitted to provide legal services."[58] Those who defend the lawyer monopoly are so confident in this premise that they declare it to be "irrefutable."[59] But the premise, in fact, is *testable*.[60] Evaluating the premise by rigorously analyzing the best evidence currently available, we find that nonlawyers, like lawyers, can supply—and are currently supplying—high-quality services across a range of areas and situations. It is time, then, as a profession, to move beyond old hunches, impulses, and shibboleths, toward empirically informed decision-making.[61]

I. THE RISE AND FALL (AND RISE) OF NONLAWYER PROVIDERS

This Part explores the historical context in which the lawyer's monopoly on legal services emerged. It first details the organized bar's concerted campaign to narrow who could practice law in Section A.[62] It then, in Section B, describes inroads into the resulting monopoly.[63]

A. Early Efforts to Establish a Lawyer Monopoly on Legal Services

In the early years of the Republic, lawyers were more the exception than the rule.[64] According to one commentator, from the early nineteenth century until after the Civil War, "little effort was made . . . either by the bar or by the courts, to prevent nonlawyers from practicing law."[65] Some state high courts had no occasion to weigh in on UPL—at all—until the 1930s.[66] Likewise, although the American Bar Association (ABA) was founded in 1878, it did not

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[58] *Id.*

[59] *Id.* The word "irrefutable" is the word that we omit from the prior above-the-line sentence and replace with ellipses.

[60] We, of course, are not the first to evaluate the premise. This piece is based on and draws from the hard and time-consuming work of dozens of empirically minded scholars who have come before. We do, however, assemble much *more* evidence than has ever been assembled.

[61] *See generally* Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U. L. REV. 297 (2019) (arguing in favor of evidence-based lawyer regulation); *see also* Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611, 2629 (2014) ("The legal profession's claims about lawyers' superiority rest largely on rhetoric rather than on empirical evidence.").

[62] *See infra* notes 64–77 and accompanying text.

[63] *See infra* notes 78–153 and accompanying text.

[64] It was largely an "informal bar" of untrained practitioners. Barlow F. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors—or Even Good Sense?*, 1980 AM. BAR FOUND. RSCH. J. 159, 162.

[65] *Id.* at 174. For a discussion of states' piecemeal efforts to restrict UPL prior to 1930, see Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97, 105–55 (2018). Even lawyers were lightly regulated; as of 1891, only a minority of states required lawyers to possess any formal legal training, and none imposed a law school graduation requirement. Hadfield, *supra* note 19, at 1277.

[66] *See, e.g.*, Rigsby, *supra* note 57, at 500 (reporting that the Virginia Supreme Court "first addressed the issue" in 1933).

establish its Unauthorized Practice Committee until 1932.[67] Perhaps as a consequence, through the early years of the last century, nonlawyers performed a wide range of services. They represented clients before a number of state and federal administrative agencies,[68] offered legal advice, provided transactional services,[69] settled clients' injury claims,[70] and drafted wills,[71] deeds, mortgages, and bills of sale.[72]

But then, under the shadow of the Great Depression, the organized bar undertook a coordinated and explicitly protectionist campaign against unlicensed individuals, as well as corporate entities providing legal services, and, through a series of actions, brought most of the above efforts to a halt.[73]

Now, the historical record is clear that the bar's crackdown on lay representation was tinged by more than a little self-interest.[74] Indeed, the UPL campaign was waged, one bar leader put it, for the "benefit" of new lawyers coming into the profession who needed work, as well as for "the thousands of men and women who will come into the profession in the future."[75] It was fueled, said another, by a resolve that the bar *needed* to act, lest the lawyer be driven "from the banquet table at which for centuries he has held a distinguished place."[76] It was not right, said a third, that "the average lawyer in New York

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[67] Davis Grant, *The Fight Against Unauthorized Practice in Texas*, 6 S. TEX. L.J. 163, 164–65 (1962) ("Strange as it may seem, the organized bar in America did not seriously concern itself with the problem of unauthorized practice until the 1930's . . . .").

[68] F. Trowbridge vom Baur, *Administrative Agencies and Unauthorized Practice of Law*, 48 A.B.A. J. 715, 716–17 (1962).

[69] Rigertas, *supra* note 65, at 142.

[70] Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 843 (2011).

[71] Frederick C. Hicks, *Practice of Law by Laymen and Lay Agencies*, 6 CONN. BAR J. 31, 34 (1932).

[72] *See* Christensen, *supra* note 64, at 183–84.

[73] *See* A.B.A. COMM'N ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS 17 (1995) [hereinafter A.B.A. NONLAWYER REPORT] ("The Great Depression was a catalyst for increased enforcement of unauthorized practice of law prohibitions."); JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 328 (1950) ("The bar became concerned with lay competition, largely under the spur of lawyers' economic distress; it then busied itself with attempts to suppress its lay competitors . . . ."); Paul H. Sanders, *Procedures for the Punishment or Suppression of Unauthorized Practice of Law*, 5 LAW & CONTEMP. PROBS. 135, 135 (1938) ("The development of effective legal remedies for use against the unauthorized practitioner, and their adoption on a widespread scale, are, in the main, events of the present decade."); *see also* Engstrom & Stone, *supra* note 18, at 191–98 (tracing these activities). Another effect of the bar's Depression-era UPL campaign was to enshrine the inherent powers doctrine, which cemented courts (not legislatures) as the exclusive source of regulation of the legal services industry. *See* Engstrom & Stone, *supra* note 18, at 171–76; Rigertas, *supra* note 65, at 163–64.

[74] *See* Engstrom & Stone, *supra* note 18, at 191–98.

[75] Jack B. Dworken, *An Open Letter*, 35 OHIO L. REP. 2, 4 (1931).

[76] Sol Weiss, *Legal Entrenchments and Lay Encroachments*, 37 COM. L.J. 19, 19 (1932).

City" was consigned to "net[] less than $3,000 a year," while "every year laymen are taking millions of dollars from the lawyers."[77]

Alas: Although the bar's motivations were questionable, the campaign's success was undeniable. Within a decade, in most areas, nonlawyer legal practice was obliterated.

Yet, in a few places, as we explain below, nonlawyers toiled on.

B. UPL Carve-outs and Contemporary Expansions

1. Longstanding Exceptions

The most prominent area of lay practice is, and has long been, before federal administrative agencies. Some agencies have *always* permitted nonlawyer practice. The U.S. Patent Office, for instance, has authorized nonlawyer representation since its inception.[78] The lay representation of veterans dates back to at least 1862,[79] and nonlawyers' (primarily accountants') representation of taxpayers has a similar historical pedigree.[80]

This nonlawyer representation has long infuriated the organized bar. Throughout the middle years of the last century, the ABA repeatedly tried to get Congress to enact some version of its "Administrative Practitioners' Act" to "eliminate the present evils" that inevitably arose when "so-called practitioners" attempted to represent clients before various administrative agencies.[81]

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[77] Joseph D. Stecher, *Unauthorized Practice and the Public Relations of the Bar*, 23 A.B.A. J. 606, 608 (1937).

[78] *See* Sperry v. Fla. *ex rel.* Fla. Bar, 373 U.S. 379, 388 (1963) (noting that "nonlawyers have practiced before the [U.S. Patent] Office from its inception" and that this authority was formalized in 1869).

[79] A.B.A. NONLAWYER REPORT, *supra* note 73, at 25.

[80] William H. Sager & Leslie S. Shapiro, *Administrative Practice Before Federal Agencies*, 4 U. RICH. L. REV. 76, 77–78 (1969); C. John Muller IV, *Circular 230: New Rules Governing Practice Before the IRS*, 1 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 284, 292–94 (2011) (describing the history of Circular 230, which governs practice before the Treasury Department); *Practice Before Government Agencies: Hearing Before Subcomm. No. 2 of the H. Comm. on the Judiciary*, 80th Cong. 85 (1948) [hereinafter *1948 Hearing*] (statement of Spencer Gordon, Counsel, Am. Inst. of Accts.) ("[A]ccountants from earliest times have been admitted to practice before the Treasury Department, and they practice there now."); F. TROWBRIDGE VOM BAUR, STANDARDS OF ADMISSION FOR PRACTICE BEFORE FEDERAL ADMINISTRATIVE AGENCIES 9 (1953) ("Practice by laymen in a representative capacity before Government agencies, prosecuting claims and in contested litigation, appears to be a development which, on any noteworthy scale, originated principally with the aftermath of the Civil War.").

[81] *Report of the Standing Committee on Unauthorized Practice of the Law*, 74 ANN. REP. A.B.A. 249, 249 (1949) [hereinafter *1949 A.B.A. Report*]. *See generally* George B. Shepherd, *Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics*, 90 NW. U. L. REV. 1557 (1996) (discussing the history of the Administrative Procedure Act).

So dogged were the ABA's efforts that, as of 1948, "twenty-two bills prohibiting lay practice" in federal administrative agencies had been introduced.[82]

Yet, these efforts went nowhere. When enacting the Administrative Procedure Act (APA) in 1946, Congress declined to impose minimum representation requirements, instead leaving the matter to agency discretion.[83] And in the ensuing years, even in the face of the ABA's insistent demands that a ban on lay administrative practice was "necessary in the public interest,"[84] Congress steadfastly refused to revisit that determination.[85]

Undaunted, in the 1960s, state bar associations tried to make an end-run around Congress and the APA by targeting individuals licensed to practice in federal administrative agencies, charging them with state-level UPL violations. In one famous case, for instance, the Florida Bar "went after" nonlawyer Alexander Sperry, a recent Florida transplant, who, for four decades, had been successfully practicing before the U.S. Patent Office.[86] The bar's theory: Although Sperry could practice before the U.S. Patent Office, he could not do so from an office in Florida (or, presumably, in any state).[87]

The Florida Supreme Court agreed and enjoined Sperry's activities.[88] But the U.S. Supreme Court saw it differently. Citing the Supremacy Clause, the Court put the brakes on this branch of the bar's UPL campaign, ruling that state UPL law, when up against "incompatible" federal legislation, had to "yield."[89]

The upshot: Although as early as 1940, the ABA proclaimed that "the time has come in America when practice before federal administrative agencies in legal matters should be limited to lawyers"—that idea has never gained traction.[90] As a consequence, numerous federal agencies authorize—and have long authorized—nonlawyer practice. These include, in addition to the U.S. Patent Office and Treasury Department,[91] the Social Security Administration

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[82] Note, *Proposed Restriction of Lay Practice Before Federal Administrative Agencies*, 48 COLUM. L. REV. 120, 124 (1948).

[83] A.B.A. NONLAWYER REPORT, *supra* note 73, at 42.

[84] *1949 A.B.A. Report*, *supra* note 81, at 249.

[85] Note, *Attorney Versus Accountant: A Professional Jurisdictional Dispute in the Field of Income Tax Practice*, 56 YALE L.J. 1438, 1446 n.29 (1947) (chronicling the ABA's numerous unsuccessful legislative efforts to fence lay representatives off from administrative practice).

[86] F. Trowbridge vom Baur, Sperry *Revisited—Unauthorized Practice and the Modern Patent Attorney*, 30 UNAUTHORIZED PRAC. NEWS 305, 310 (1965) ("[T]he Florida Bar went after him."). Sperry was first admitted to appear before the U.S. Patent Office in 1928. State *ex rel.* Fla. Bar v. Sperry, 140 So. 2d 587, 588 (Fla. 1962) *vacated*, 373 U.S. 379 (1963).

[87] vom Baur, *supra* note 86, at 310.

[88] *Sperry*, 140 So. 2d at 591.

[89] *See* Sperry, 373 U.S. at 384. *See generally* Keller v. Wis. *ex rel.* State Bar of Wis., 374 U.S. 102 (1963) (involving an individual permitted to practice before the Interstate Commerce Commission, targeted by the Wisconsin State Bar).

[90] *Report of the Special Committee on Administrative Law*, 65 ANN. REP. A.B.A. 215, 220 (1940).

[91] *1948 Hearing*, *supra* note 80, at 85.

(SSA),[92] the National Labor Relations Board,[93] the Department of Justice (which houses, among other things, the Board of Immigration Appeals),[94] the Department of Homeland Security (which includes U.S. Citizenship and Immigration Services),[95] the Department of Veterans Affairs,[96] the U.S. Department of Labor,[97] and the Department of Agriculture.[98] Of these, some impose special certification, education, training, or insurance requirements; others have more of an open-door policy.[99]

States, too, sport and have long sported a hodgepodge of carve-outs and exceptions.[100] Some states, for example, allow nonlawyer tax professionals to provide legal advice.[101] Others let nonlawyers prepare certain bankruptcy filings.[102] The majority of states let licensed "public adjusters" represent clients in property damage negotiations with their own ("first-party") insurers.[103] More than a dozen states let nonlawyer advocates assist and advise survivors of domestic violence.[104] All states permit nonlawyer insurance adjusters to ne-

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[92] *See* 42 U.S.C. § 406(e)(2); 20 C.F.R. § 404.1705(b) (2026); Swank, *supra* note 24, at 234–35 (estimating that nonlawyers represent individuals in "77,000 to 98,000 cases per year").

[93] *See* John C. Gall, *Practice by Non-Lawyers Before the National Labor Relations Board*, 15 FED. BAR J. 222, 222 (1955); Zona Fairbanks Hostetler, *Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, 2 ADMIN. L.J. 85, 124 (1988).

[94] AMY WIDMAN, NONLAWYER ASSISTANCE AND REPRESENTATION: REPORT TO THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES 18 (2024) (discussing nonlawyer practice before the Board of Immigration Appeals).

[95] Careen Shannon, *To License or Not to License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers*, 33 CARDOZO L. REV. 437, 447 (2011) (detailing the various levels of accreditation and nonlawyer practice before the Department of Justice versus the Department of Homeland Security).

[96] ATT'Y GEN.'S COMM. ON ADMIN. PROC., ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. DOC. NO. 186, at 38 (3d Sess. 1940) (explaining that the bulk "of the actual representation of claimants before the various Administration boards . . . is performed by nonlawyers") [hereinafter ADMINISTRATIVE PROCEDURE IN GOVERNMENT].

[97] WIDMAN, *supra* note 94, at 20 ("The VA authorizes and encourages nonlawyers to assist veterans. At the initial claims level, the vast majority of claimants are represented by nonlawyer representatives . . . .").

[98] Bruce A. Green & M. Ellen Murphy, *Replacing This Old House: Certifying and Regulating New Legal Services Providers*, 76 WASH. U. J.L. & POL'Y 45, 72 (2025).

[99] *See* WIDMAN, *supra* note 94, at 40 ("Agencies vary immensely in the specificity and depth of the qualifications necessary to represent someone before them."); Green & Murphy, *supra* note 98, at 73–74 (providing examples).

[100] *See* Green, *supra* note 27, at 1269 ("[T]he courts' authorization of nonlawyer professionals has been piecemeal, highly selective, haphazard and, in some places, unofficial."). For additional examples, see Green, *supra* note 21, at 1291–92.

[101] *E.g.*, UTAH CODE JUD. ADMIN. r. 14-802(d)(12)(F) (2023).

[102] 11 U.S.C. § 110 (setting forth the standards for the "bankruptcy petition preparer").

[103] Engstrom, *supra* note 70, at 843.

[104] *Landscape Analysis: What Services Domestic Violence Organizations Currently Provide*, I4J, https://uplpolicytoolkit.org/?page_id=40 [perma.cc/54B2-78GB] (explaining that sixteen states have UPL exceptions permitting domestic violence advocates to offer some legal help); *cf.* Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer's Monopoly*, 89 FORDHAM L. REV. 1315, 1315–17 (2021) (suggesting that, beyond the above,

gotiate personal injury claims (even though, when a nonlawyer negotiates those very same claims on behalf of an injured individual, it is a crime).[105] A majority of states allow nonlawyers to handle real estate closings.[106] Still others permit nonlawyers to represent injured workers in workers' compensation claims.[107] And finally, some permit nonlawyers to negotiate union contracts.[108]

Some of these exclusions are of relatively recent vintage. In 2003, for instance, Arizona gave the go-ahead to "[l]egal document preparer[s]," permitted "to prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public who is engaging in self representation in any legal matter."[109] Meanwhile, in 1998, California gave the green light to "legal document assistants," who are permitted to prepare court documents (although not furnish legal advice).[110] Other identified exceptions, such as the allowance for insurance adjusters, have existed for nearly a century.[111]

How did these statewide carve-outs come to be? Some are the result of political action. Arizona offers a case in point. In 1961, in *State Bar v. Arizona Land Title & Trust Co.*, the Arizona Supreme Court interpreted the state's UPL laws to bar real estate agents from preparing purchasing agreements.[112] Real estate brokers—furious about this new restriction—responded by launching a successful ballot initiative to secure a state constitutional amendment to au-

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more states informally permit nonlawyer practice in this domain); *see also* GEORGIA REPORT, *supra* note 9, at 30–31 ("[F]or over 30 years, Georgia law has allowed certain non-attorneys who are designated by the court to assist victims of family violence with applying for domestic violence protective orders.").

[105] *See* Engstrom, *supra* note 70, at 842 (discussing this double standard).

[106] Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2590 (1999) (reporting that a majority of states allow real estate brokers to prepare or fill out documents for a real estate transaction where no charge for the service is made); Letter from Anne K. Bingaman, Assistant Att'y Gen., U.S. Dep't of Just. & William J. Baer, Dir., Fed. Trade Comm'n, to Hon. Thomas A. Edmonds, Exec. Dir., Va. State Bar 3 (Sep. 20, 1996) [hereinafter Bingaman & Baer Letter].

[107] *E.g.*, WIS. SUP. CT. r. 23.02(2)(c) (2012) (excepting and excluding from the state's UPL statute persons "[a]ppearing in a representative capacity before an administrative tribunal or agency to the extent permitted by such tribunal or agency"); *see also* Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 103–04 (1981) (illustrating that, as of 1981, twenty out of fifty Workers' Compensation Boards permitted lay representation).

[108] *E.g.*, *Unauthorized Practice Rules: Exceptions*, VA. STATE BAR, https://vsb.org/Site/01_About/RulesRegulations/Unauthorized-Practice-Rules.aspx [perma.cc/4UGC-B4RQ] (stating that nonlawyers may engage in, among other activities, "[p]articipating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements").

[109] ARIZ. CODE JUD. ADMIN. § 7-208(A) (2025).

[110] S.B. 1418, 1997–98 Leg., Reg. Sess. (Cal. 1998); CAL. BUS. & PROF. CODE § 6400(c)–(d) (West 2026). Green, *supra* note 27, at 1268; Levin, *supra* note 61, at 2615.

[111] *See generally* Nora Freeman Engstrom & James Stone, *Insurance Company Exceptionalism* (forthcoming 2026) (on file with authors) (discussing the fact that nonlawyer insurance adjusters are allowed to settle claims—and have been for nearly a century).

[112] 366 P.2d 1, 14 (Ariz. 1961).

thorize their activities.[113] Indeed, so lopsided was the resulting popular vote that one commentator dubbed it "the most resounding debacle in the history of the organized bar's assault upon the 'unauthorized practice of law.'"[114]

Other carve-outs are the result of legislative activity. Virginia offers an exemplar. On October 17, 1996, the Virginia State Bar issued a proposed opinion, advising that only lawyers should be allowed to conduct real estate closings.[115] While court approval was pending, the Federal Trade Commission and the DOJ registered concern.[116] Then, the Virginia Legislature got involved and asked the bar to quantify the incidence of error in real estate closings conducted by lawyers and nonlawyers, respectively.[117] Apparently unsatisfied with the bar's response, in 1997, the legislature enacted the Consumer Real Estate Settlement Protection Act, establishing that real estate brokers and others can furnish residential real estate settlement services, no law license required.[118]

Other carve-outs are traceable to negotiation. Insurance companies, for instance, got an exemption for insurance adjusters by reaching an early détente with the organized bar.[119] Likewise, California's Legal Document Preparer Program was born of a "compromise between many segments of the bar that adamantly opposed any legislation legitimizing or recognizing nonlawyer practice and groups that advocated broad recognition of law workers other than lawyers."[120]

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[113] Weckstein, *supra* note 40, at 649; Merton E. Marks, *The Lawyers and the Realtors: Arizona's Experience*, 49 A.B.A. J. 139, 141 (1963).

[114] Robert E. Riggs, *Unauthorized Practice and the Public Interest: Arizona's Recent Constitutional Amendment*, 37 S. CAL. L. REV. 1, 1 (1964); *see also* Marks, *supra* note 113, at 141 (reporting that "the constitutional amendment was passed by an overwhelming majority of the voters").

[115] *See* UPL Opinion 183, 47 VA. LAW. 40, 40 (Va. 1998); Joyce Palomar, *The War Between Attorneys and Lay Conveyancers—Empirical Evidence Says "Cease Fire!,"* 31 CONN. L. REV. 423, 434–36 (1999).

[116] Bingaman & Baer Letter, *supra* note 106, at 1, 3 (warning that the position would "deprive Virginia consumers of the choice to use a lay settlement service," which would, in turn, "likely increase the cost of real estate closings for consumers").

[117] Palomar, *supra* note 115, at 428 n.6, 431 n.14.

[118] *Id.* at 435; *see* Rigertas, *supra* note 65, at 159–63 (chronicling events in Washington state during the 1970s regarding the preparation of legal documents in real estate transactions); *see* VA. CODE ANN. § 55.1-1002 (2026). It appears that the bar was able to identify thirty-one examples of harm that lay settlement services had allegedly caused to consumers. This, the DOJ and FTC pointed out, represented "a minuscule fraction of the tens of thousands of lay settlements in Virginia during the past 15 years and suggests a safety record that other industries might envy." Letter from Joel I. Klein, Acting Assistant Att'y Gen., U.S. Dep't of Just. & William J. Baer, Dir., Fed. Trade Comm'n, to David B. Beach, Clerk of Ct., Sup. Ct. of Va. 5 (Jan. 3, 1997).

[119] *See generally* Engstrom & Stone, *supra* note 111 (tracing the origins of the insurance adjuster exemption). Helping to cement this agreement was a declaratory judgment action filed by six of the country's prominent insurers. *See generally* Liberty Mut. Ins. Co. v. Jones, 130 S.W.2d 945, 961–62 (Mo. 1939) (holding that lay adjusters could settle insurance claims).

[120] Herbert M. Kritzer, *The Future Role of "Law Workers": Rethinking the Forms of Legal Practice and the Scope of Legal Education*, 44 ARIZ. L. REV. 917, 927 (2002).

Some, meanwhile, came about because of state supreme court determinations.[121] In New Jersey, for instance, the state supreme court ruled in 1995, in *In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law*, that nonlawyers could conduct closings, after finding that real estate closing fees were lower in southern New Jersey, where lay closings were commonplace, than in the northern part of the state, where lawyer representation was the norm.[122]

Finally, other carve-outs are traceable to federal intervention,[123] reflect a consideration of the relative informality of the tribunal,[124] or were created in light of the simplicity of the work at hand.[125]

2. The Modern Movement

Now, we are in the midst of a new push to relax the lawyer's monopoly.[126] In recent years, nearly a dozen states have taken steps to expand access to an array of legal services.[127] Particularly relevant here: A number of states have authorized nonlawyers to deliver legal services, roughly akin to nurse practitioners in medicine.[128]

This modern effort dates back to 2015, when Washington launched its Limited License Legal Technicians (LLLTs) program. These LLLTs, who be-

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[121] *See, e.g.*, ARIZ. CODE JUD. ADMIN. § 7-208(C) (2003) (stating that, in creating the legal document preparer program, the Arizona Supreme Court intended to "[p]rotect the public through the certification of legal document preparers to ensure conformance to the highest ethical standards and performance of responsibilities in a professional and competent manner").

[122] 654 A.2d 1344, 1348–51 (N.J. 1995).

[123] Bingaman & Baer Letter, *supra* note 106, at 1. *See generally* United States v. Allen Cnty. Bar Ass'n, No. F 79-0042, 1980 U.S. Dist. LEXIS 14680, at *1 (N.D. Ind. Oct. 7, 1980) (involving the DOJ's successful action against the Allen County Bar for discouraging the use of title insurance companies).

[124] *See, e.g.*, Harkness v. Unemployment Comp. Bd. of Rev., 920 A.2d 162, 168 (Pa. 2007) (holding that "non-attorney employer representatives at unemployment compensation proceedings are not engaging in the practice of law" because, inter alia, unemployment compensation proceedings are "informal" and only "minimal amounts" are at issue). *See generally* Gregory Zlotnick, *Inviting the People into People's Court: Embracing Non-Attorney Representation in Eviction Proceedings*, 25 MARQ. BENEFITS & SOC. WELFARE L. REV. 83 (2023) (discussing Texas's authorization of nonlawyer representation in eviction matters, where lay judges preside and evidentiary and procedural rules are relaxed).

[125] Numerous UPL carve-outs are justified by the availability and mandated use of state-sanctioned, lawyer-created preprinted forms. *See* William M. Dishman, Note, *Unauthorized Practice of Law by Realtors and Title Insurance Companies*, 49 KY. L.J. 384, 385 (1961) (exploring the argument that lawyers may be unnecessary when pre-printed forms are widely available).

[126] As Leslie Levin has aptly put it: "The U.S. legal profession's so-called monopoly on the practice of law is under siege." Levin, *supra* note 61, at 2611.

[127] *See supra* note 33.

[128] For a helpful catalog of existing programs, see GEORGIA REPORT, *supra* note 9, at 116–35. For the nurse practitioner analogy, see, for example, Press Release, Ariz. Sup. Ct., Arizona Supreme Court Makes Generational Advance in Access to Justice 1–2 (Aug. 27, 2020) [hereinafter AZ August 2020 Press Release].

came licensed after earning (at least) an associate-level degree, logging 1,500 hours of work experience, and passing a bar exam-like test, were permitted to assist clients out of court in certain family law matters (but not beyond that).[129]

In the ensuing years, several other states followed, and some of these efforts expanded on the LLLT model. Fueled by a desire to create "a market based solution for the unmet needs of litigants," the Utah Supreme Court authorized a paraprofessional program in 2018.[130] These paraprofessionals, who have to hold a college degree, amass 1,500 hours of experience, and pass an exam, are permitted to advise clients on a range of matters (not just family law) and accompany clients into court (but not supply active representation).[131] Two years later, Arizona and Minnesota followed suit; indeed, in these states (unlike in Utah), nonlawyers can even represent clients in court.[132] In 2022, the Oregon Supreme Court approved the Licensed Paralegal program which launched in 2024.[133] Also in 2022, the New Hampshire legislature passed a paraprofessional pilot project, which moved into its second phase at the beginning of 2025.[134] Colorado's Licensed Legal Paraprofessionals program went live in 2024.[135]

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[129] WASH. ADMISSION & PRAC. r. 28 (2024). For more on Washington's LLLT program, see generally JASON SOLOMON & NOELLE SMITH, THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM (2021) (discussing the LLLT program); Benjamin H. Barton, *The LLLT Conundrum*, 76 WASH. U. J.L. & POL'Y 5 (2025) (evaluating the viability and efficacy of these programs in addressing the justice gap). The Washington Supreme Court decided to sunset the LLLT program in 2020, citing the overall costs of sustaining the program and the small number of interested individuals. The then-licensed LLLTs were authorized to continue providing services. Letter from Debra L. Stephens, C.J., Wash. Sup. Ct., to Stephen R. Crossland, Chair, Ltd. License Legal Tech. Bd., Terra Nevitt, Interim Exec. Dir., Wash. State Bar Ass'n & Rajeev Majumdar, President, Wash. State Bar Ass'n 2 (June 5, 2020); Lyle Moran, *How the Washington Supreme Court's LLLT Program Met Its Demise*, A.B.A. J. (July 9, 2020), https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise [perma.cc/6SF3-N8SE].

[130] *Licensed Paralegal Practitioner*, UTAH STATE CTS., https://www.utcourts.gov/en/about/miscellaneous/legal-community/lpp.html [perma.cc/88QZ-Y6FF]. A Utah State Bar survey conducted at the time found that "people are often interested in self-representation with some support from a legal practitioner." *See, e.g.*, Catherine J. Dupont, *Licensed Paralegal Practitioners*, 31 UTAH BAR J. 16, 18 (2018).

[131] UTAH CODE JUD. ADMIN. r. 15-703(c)-(f) (2025). While in court, paraprofessionals can sit with clients and provide emotional support, take notes, and answer the client's factual questions. *Id.* r. 14-802(c)(1)(L).

[132] AZ August 2020 Press Release, *supra* note 128; Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. Sep. 29, 2020). For in-court representation, Minnesota requires attorney supervision, but this does not necessarily mean that the attorney must accompany the paraprofessional. *Legal Paraprofessional Program—Frequently Asked Questions*, MINN. JUD. BRANCH, https://mncourts.gov/help-topics/Legal-Paraprofessional-Program/faq [perma.cc/C97U-PV43].

[133] *See generally* OR. STATE BAR, SUPREME COURT OF THE STATE OF OREGON RULES FOR LICENSING PARALEGALS (2025) (setting forth the rules framework for licensed paralegals in Oregon).

[134] H.B. 1343, 2022 Leg., Reg. Sess. (N.H. 2022) (enacted); Tom Jarvis, *Newly Enacted Paraprofessional Pilot Program Helps Promote Access to Justice*, N.H. BAR ASS'N, https://www.nhbar.

Pioneered in Alaska, a related approach—the Community Justice Worker (CJW)—is also gaining momentum.[136] Compared to the above programs that license paraprofessionals, CJW programs have a lower barrier to entry. Whereas paraprofessionals, who can typically work without attorney supervision, have to satisfy onerous education, training, and examination requirements, CJWs, who are employed by and subject to the supervision of nonprofit community organizations or legal aid offices, merely receive training in very specific aspects of legal process (e.g., how to complete public benefits forms).[137] In this way, CJWs permit perennially overwhelmed legal aid organizations to enhance their capacity and expand their reach.[138]

In 2020, Arizona authorized its first CJW program. Initially focused on domestic violence, that program was subsequently expanded to a range of areas.[139] Utah has, likewise, authorized a smattering of CJWs,[140] and, in 2022,

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org/newly-enacted-paraprofessional-pilot-program-helps-promote-access-to-justice/ [perma.cc/F2Z9-YWRH].

[135] *Licensed Legal Paraprofessionals—Background*, OFF. OF ATT'Y REGUL. COUNS., https://www.coloradolegalregulation.com/future-lawyers/llpgeneraloverview/ [perma.cc/6CA2-MYWK]; Workplace Culture Initiative, *Licensed Legal Paralegals—Changing the Face of the Legal Profession*, COLO. CTS., https://judicialwci.colorado.gov/licensed-paralegals-changing-the-face-of-the-legal-profession [perma.cc/495C-BCEJ].

[136] The CJW program in Alaska was the brainchild of a 2016 Alaska Supreme Court committee convened to address, among other things, the resource deficits afflicting rural communities. *See* Nikole Nelson, *Alaska Legal Services Corporation: Moving Beyond Lawyer-Based Solutions with Community Justice Workers*, LEGAL SERVS. CORP., https://lsc-live.app.box.com/s/4m9rcenmeu46uxvqe4d4gko0s528pu3t [perma.cc/KF3L-GDEM]; Talk Justice, *Taking Community Justice Workers Nationwide*, LEGAL TALK NETWORK (Jan. 9, 2024), https://legaltalknetwork.com/podcasts/talk-justice/2024/01/talk-justice-an-lsc-podcast-taking-community-justice-workers-nationwide/ [perma.cc/KH64-STFN] (interviewing former Alaska LSC Executive Director Nikole Nelson).

[137] Once trained and supervised, some CJWs can do more than traditional paralegals, sometimes even offering in-court assistance. *E.g.*, *Community Justice Worker Program*, ALASKA LEGAL SERVS. CORP., https://www.alsc-law.org/cjw/ [perma.cc/XY6R-CMNC] (indicating plans to prepare CJWs to represent clients in court). For the traditional constraints on paralegals, see *supra* note 30 and accompanying text.

[138] *See, e.g.*, *Closing the Justice Gap Hearings*, *supra* note 10, at 4 (statement of Nikole Nelson, CEO, Frontline Justice).

[139] Initially, Arizona limited this effort to a single organization (namely, Emerge! Center Against Domestic Abuse) and a single jurisdiction (Tucson). In 2023, Arizona expanded the program statewide. Cayley Balser & Stacy Rupprecht Jane, *The Diverse Landscape of Community-Based Justice Workers*, IAALS BLOG (Feb. 22, 2024), https://iaals.du.edu/news/diverse-landscape-community-based-justice-workers [perma.cc/84F7-Y9C5]. In early 2023, it authorized a second CJW program focused on housing issues. *In re* Authorizing a Hous. Stability Legal Advoc. Pilot Program, No. 2023-19 (Ariz. 2023). Then, in 2025, it expanded the program to six additional areas. ARIZ. CODE JUD. ADMIN. § 7-211 (2025); Press Release, Ariz. Sup. Ct., Arizona Supreme Court Approves Expanding Community-Based Justice Worker Programs (Mar. 26, 2025).

[140] Three examples include the Timpanagos Legal Center (that provides services in the area of domestic violence), Holy Cross Ministries (that provides services in the area of consumer medical debt), and Community Justice Advocates (that provides services in the areas of consumer medical debt, housing, and domestic violence). As of mid-2025, the Timpanogos Legal Center Certified Advocate Partners Program and Holy Cross Ministries Medical Debt Legal Advocate Program have

Delaware launched a CJW program specifically to serve tenants in eviction proceedings.[141] In Hawaii, the Rural Paternity Advocate Pilot Project authorizes supervised nonlawyers to assist in paternity, custody, and visitation matters.[142] Meanwhile, South Carolina has recently authorized what amounts to a CJW program to help those facing eviction actions; a nonprofit in New York had proposed the same for debt collection actions, but the program's fate is currently uncertain. Both programs came about, not organically, but as a result of impact litigation.[143] The figure below provides context.

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transitioned to Community Justice Advocates of Utah, another sandbox entity. Press Release, Cmty. Just. Advocs. of Utah, Holy Cross Ministries Strengthens Medical Debt Legal Advocacy Through Strategic Collaboration with Community Justice Advocates of Utah (July 21, 2025), https://cdn.prod.website-files.com/65d56a42731a65e4a29863ef/687db336b8feb22dc4f1b787_HCM%20_%20CJAU%20Press%20Release.pdf [perma.cc/5US8-4LCK]; Press Release, Cmty. Just. Advocs. of Utah, Community Justice Advocates of Utah to Manage the Certified Advocate Partners Program (Aug. 14, 2025), https://cdn.prod.website-files.com/65d56a42731a65e4a29863ef/68b1cf14128856d78e8a4201_CAPP%20Press%20Release.pdf [perma.cc/88GV-XHAK]; *Authorized Entities*, UTAH OFF. OF LEGAL SERVS. INNOVATION, https://utahinnovationoffice.org/authorized-entities/ [perma.cc/SHH7-TMQ9]; Balser & Jane, *supra* note 139. Utah authorized these programs through the state's regulatory sandbox—a space where entities can apply for a waiver of UPL rules to allow nonlawyers to deliver legal services. For more on the Utah regulatory sandbox, see *Innovation Office Metrics*, UTAH OFF. OF LEGAL SERVS. INNOVATION, https://utahinnovationoffice.org/innovation-office-metrics/ [perma.cc/9D79-JFYT].

[141] Balser & Jane, *supra* note 139.

[142] Order Establishing a Rural Paternity Advocate Pilot Project in the Third Circuit, *In re* Rural Paternity Advoc. Pilot Project, No. SCMF-23-0000343 (Haw. May 15, 2023); Order Extending the Pilot Project, *In re* Rural Paternity Advoc. Pilot Project, No. SCMF-23-0000343 (Haw. May 28, 2025).

[143] For more on the New York litigation, see generally Upsolve, Inc. v. James, 155 F.4th 133 (2d Cir. 2025), *cert. denied*, No. 25-948, 2026 WL 858427 (U.S. Mar. 30, 2026) (vacating the trial court's preliminary injunction barring enforcement of state UPL statutes against Upsolve's Justice Advocates program). Andrea Keckley, *2nd Circ. Allows NY AG to Curb Nonprofit's Debtor Coaching*, LAW360 (Sep. 9, 2025), https://www.law360.com/articles/2385874/2nd-circ-allows-ny-ag-to-curb-nonprofit-s-debtor-coaching [perma.cc/5GNJ-XMUD] (discussing the Second Circuit's decision in *Upsolve*); Nick Rummell, *2nd Circuit Seems Unlikely to Allow Nonprofit to Keep Offering Legal Advice*, COURTHOUSE NEWS SERV. (May 29, 2024), https://www.courthousenews.com/2nd-circuit-seems-unlikely-to-allow-nonprofit-to-keep-offering-legal-advice/ [perma.cc/4HBS-E4DA] (discussing the Second Circuit's disposition in *Upsolve*). For more on South Carolina, see Sara Merken, *South Carolina Court Says NAACP Program Doesn't Violate Legal Practice Curbs*, REUTERS (Feb. 14, 2024), https://www.reuters.com/legal/legalindustry/south-carolina-court-says-naacp-program-doesnt-violate-legal-practice-curbs-2024-02-13/ [perma.cc/CTA9-C9RC] (discussing the South Carolina Supreme Court's approval, on a provisional basis, of the South Carolina NAACP program).

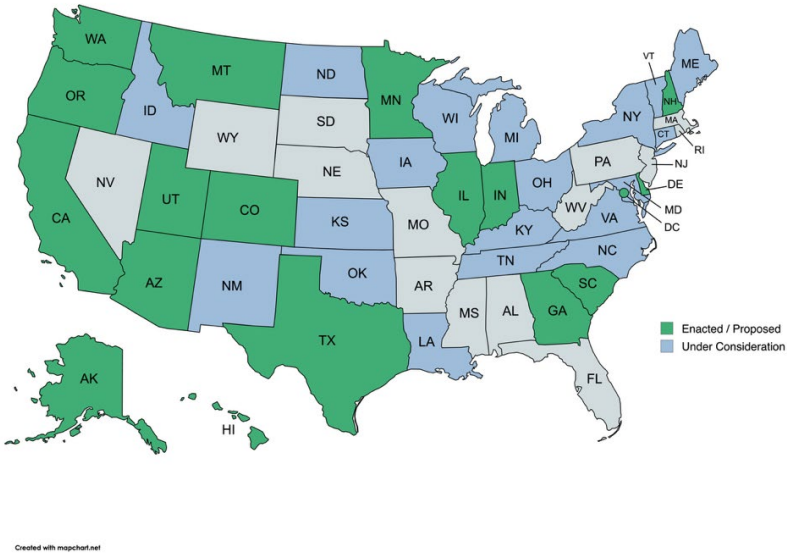

Figure 1: Nonlawyer Assistance Enacted/Proposed or Under Consideration, Apr. 2026

These recent reforms vary on the particulars. They were instituted at different times, via different processes, in different places. Some attempt to reach the middle class; others serve low-income individuals.[144] Some, such as the programs in Delaware and South Carolina, restrict providers to particular subject-matter areas (e.g., eviction).[145] Others, such as the programs in Arizona, Alaska, and Utah, cover the waterfront.[146] Some, such as the pending CJW program in New York, limit providers to simple, discrete tasks.[147] Others, such as the paraprofessional program in Minnesota, permit providers to engage in a

[144] *E.g.*, *Unlocking Legal Regulation: Knowledge Center*, IAALS, https://iaals.du.edu/projects/unlocking-legal-regulation/knowledge-center [perma.cc/WT6D-A9CL] (describing "[a]llied legal professionals" as including "a market-based model that targets middle and low-income individuals" and "community-based justice worker models" as "target[ing] low-income individuals").

[145] DEL. SUP. CT. r. 57.1 (2022) (setting the rules for Qualified Tenant Advocates representing tenants in actions for summary possession in Justice of the Peace Courts); Merken, *supra* note 143 (describing the South Carolina NAACP program for low-income individuals in eviction cases).

[146] For the multidisciplinary scope of Arizona and Utah's allied legal professional programs, see MICHAEL HOULBERG & JANET DROBINSKE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES 19–26 (2022). For an overview of the legal areas in which Alaska's community justice workers are authorized to provide services, see MATTHEW BURNETT, REBECCA L. SANDEFUR & JAMES TEUFEL, RESEARCH BRIEF: ANALYSIS OF THE SOCIAL AND ECONOMIC IMPACT OF THE ALASKA COMMUNITY JUSTICE WORKER PROGRAM (2021–2025), at 2 (2025).

[147] *Upsolve*, 155 F.4th at 136 ("Upsolve intends to train nonlawyer 'Justice Advocates,' such as Rev. Udo-Okon, to advise *pro se* New Yorkers on how to complete the state's check-the-box form for answering debt-collection claims.").

wide range of activities.[148] Some, like the LLLT program in Washington, draw the line at in-court assistance.[149] Others, like the paraprofessional program in Arizona, permit even this type of representation.[150] Some, like Colorado's paraprofessional program, impose strict education, examination, and regulatory requirements.[151] Others, as in states that have adopted the CJW model, have lower barriers to entry.[152] Yet in all of these states, and across all of these programs, authorized nonlawyers are permitted to engage in activities that would otherwise constitute the practice of law.

In this swirl of activity—and, particularly, at this moment, as various states that have not yet relaxed their UPL rules are considering whether to follow suit—one question looms large: How, exactly, do nonlawyer providers fare? Do these individuals provide high-quality legal services? Or is it true, as many still insist, that having a JD remains necessary to ensure that legal services are furnished with "integrity and competence"?[153]

That is the question to which we now turn.

II. Empirical Research on Nonlawyer Providers

Part I demonstrated that, for well over a century, nonlawyer professionals have engaged in activities that technically constitute the practice of law. What can we learn from this experience?

Mining available evidence, this Part shows that knowledgeable, trained nonlawyers can be effective advocates across a variety of domains. Section A sets the stage by offering caveats about the diverse scenarios in which nonlawyer providers have been studied and the different methodologies that these

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[148] *See* Michael Houlberg & Natalie Anne Knowlton, Inst. for the Advancement of the Am. Legal Sys., Allied Legal Professionals: A National Framework for Program Growth 15–17 (2023) (describing the roles and responsibilities across active and proposed state allied legal professional programs).

[149] Wash. Admission & Prac. r. 28(H)(5) (2024) (including among the prohibited acts the representation of clients "in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process").

[150] Houlberg & Knowlton, *supra* note 148, at 19 ("Arizona and Minnesota permit full in-court representation for specific types of cases, allowing ALPs to represent their clients as attorneys do, including presenting their client's case and questioning/cross-examining witnesses. Arizona ALPs can carry out these actions without supervision by an attorney . . . .").

[151] R. Governing Admission to the Prac. of Law in Colo. 207.8(3)–(7) (2025) (requiring all Colorado LLP applicants to have achieved certain education or work requirements, to have passed an examination, and to have demonstrated 1,500 hours of substantive legal experience, among other things).

[152] *See* Houlberg & Knowlton, *supra* note 148, at 21–26 (detailing differences across state programs with respect to, inter alia, eligibility, education, practical training, testing, licensing, and fee-sharing).

[153] Model Code of Pro. Resp. Canon 3 (A.B.A. 1980) ("The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence . . . .").

studies employ.[154] Then, Section B canvasses half a century of empirical evidence from the United States,[155] while Section C looks beyond the United States to assess evidence from the United Kingdom.[156]

A. Research Scope and Methodology

A number of scholars from a range of disciplines have evaluated nonlawyer legal service delivery. Some have evaluated various state court proceedings, where (as explained above) UPL carve-outs allow—and have long allowed—nonlawyers to operate.[157] Some have zeroed in on administrative tribunals (both federal and state), where, again, certain nonlawyer advocates are, and have long been, authorized.[158] And some have studied nonlawyers overseas, particularly in the United Kingdom, where, thanks to a different regulatory structure, nonlawyers can offer a wide range of assistance.[159]

Meanwhile, just as scholars have studied a range of nonlawyer activity, they have deployed a range of methodologies. Some have engaged in docket and case analysis.[160] Others have learned by observation.[161] Others have conducted interviews.[162] Still others have had experts systematically evaluate lawyer- and nonlawyer-generated work product.[163] But, wherever they have worked and however they have gathered evidence, researchers have tended to

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[154] *See infra* notes 157–169 and accompanying text.

[155] *See infra* notes 170–280 and accompanying text.

[156] *See infra* notes 281–303 and accompanying text.

[157] *E.g.*, Donald N. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 U. MICH. J.L. REFORM 341 (1987).

[158] *E.g.*, HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998) (discussing research on nonlawyer advocates in different administrative settings); Hostetler, *supra* note 93 (same).

[159] *E.g.*, Richard Moorhead, Alan Paterson & Avrom Sherr, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC'Y REV. 765 (2003) (testing the assumption that lawyers are more competent than nonlawyers). Although it may be tempting to dismiss research from England and Wales as involving sufficiently different legal systems, Deborah Cantrell notes, at least in regard to Richard Moorhead et al.'s work, that "the systemic differences are modest enough that the study's results remain relevant to discussions about nonlawyer practice in the United States." Deborah J. Cantrell, *The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers*, 73 FORDHAM L. REV. 883, 890 (2004).

[160] *E.g.*, Anna E. Carpenter, Alyx Mark & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 LAW & SOC. INQUIRY 1023 (2017) (presenting findings from research on lawyers and nonlawyers in unemployment insurance appeal hearings).

[161] *E.g.*, KRITZER, *supra* note 158 (employing a research design that consists of observations and reviews of quantitative indicators of outcome).

[162] *E.g.*, Charles E. Clark & Emma Corstvet, *The Lawyer and the Public: An A.A.L.S. Survey*, 47 YALE L.J. 1272 (1938) (discussing results from a survey of the public's attitude toward lawyers).

[163] *E.g.*, LEGAL SERVS. CONSUMER PANEL, REGULATING WILL-WRITING 2–3 (2011) (investigating the quality of will-writing services between solicitors and nonlawyer will-writing companies).

focus on two core questions: Are nonlawyers effective (outcome-based metrics)? And, if they are effective, why (process-based metrics)?

Before proceeding, two points bear mention. First, what some of these studies try to do (implicitly or explicitly) is to compare the representation furnished by nonlawyers to the representation furnished by lawyers. Yet, to do that well, we would need a good sense of the quality of representation that lawyers provide. Just how good are lawyers along various dimensions? How satisfied are clients with the representation they receive? How often do lawyers drop the ball or breach their professional obligations? We also, perhaps, would have a good sense of what clients actually *want* when they go to lawyers—as that is at least arguably key to knowing how to assess "quality" in the first instance.[164] (For example, a lawyer who maximized the value of a client's claim by engaging in protracted, bare-knuckled litigation has not served the client well if the client actually just wanted a speedy, no-fuss recovery.) Unfortunately, our collective understanding of what clients want[165]—and whether lawyers satisfy (or fail to satisfy) clients' objectives—is unbelievably thin.[166]

Second, what is missing from this compilation of research on nonlawyers—because there are none available—are randomized controlled trials, the

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[164] Individuals, logically, do not want the same thing when they go to lawyers. Personal injury client A, for instance, may want to maximize her monetary recovery, no matter the cost. Personal injury client B might want to obtain a fair sum, for a minimum of time and trouble. Divorce client A might want to inflict as much pain as possible on her former spouse. Divorce client B might want the opposite. In these scenarios, a lawyer who served client A well might not serve client B well at all. This variability, based on client preferences, contrasts sharply with the medical sphere, where we can confidently compare doctor A with doctor B, as most patients, most of the time, want the same thing (to recover from illness or injury fully and expeditiously—and not die). Further, when medical professionals err, deaths sometimes follow, and these deaths are comparatively easy to count and hard to hide. When lawyers err, the error can be more easily swept under the rug and chalked up to the difficulty of the underlying case. For a compilation of existing research about client desires, see Nora Freeman Engstrom & Lisa Qian, *The Injunctive Effect of Tort Law* (forthcoming 2026) (on file with authors).

[165] *See* Deborah R. Hensler, *A Glass Half Full, a Glass Half Empty: The Use of Alternative Dispute Resolution in Mass Personal Injury Litigation*, 73 TEX. L. REV. 1587, 1626 (1995) ("We do not really know what . . . claimants want from the civil justice system, what they expect, or what they think of what they get.").

[166] *See, e.g.*, Carpenter et al., *supra* note 160, at 1024 ("[S]cholars . . . know little about the mechanisms of lawyer representation, or what lawyers do that actually helps parties in civil litigation.") (citations omitted); Nora Freeman Engstrom & Brianne Holland-Stergar, *Competition and Contingency Fees*, 114 GEO. L.J. (forthcoming 2026) ("[T]he market for legal services is marked by a near total absence of objective information bearing on provider quality.") (manuscript at 25) (on file with authors); Herbert M. Kritzer, *Rethinking Barriers to Legal Practice*, 81 JUDICATURE 100, 101 (1997) (recognizing that "we know almost nothing about the frequency of 'legal error,' a term that parallels the idea of "medical error"); Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J.C.R. & C.L. 283, 298 (2020) ("Vanishingly few systematic empirical studies assess the quality of lawyers' work . . . ."). For a more general discussion, see generally William H. Simon, *Where Is the "Quality Movement" in Law Practice?*, 2012 WIS. L. REV. 387 (discussing how the quality movement has seemed to bypass law).

gold standard in empirical research. There have only been a few such randomized controlled trials exploring the effects of lawyer representation more broadly,[167] and those studies, in the view of some, raise more questions than they answer.[168] Although we wish it were otherwise, we do not yet have a single randomized controlled trial that evaluates how those represented by lawyers versus nonlawyer professionals fare.[169]

B. Evidence from the United States

Below, we compile evidence from the United States in three parts, moving, essentially, from least rigorous to most rigorous. We begin with a set of anecdotal accounts. Next, we turn to more recent empirical research. Finally, we present a third, more rigorous tranche of evidence drawn from quantitative comparisons between nonlawyer representatives, lawyers, and pro se litigants. All three buckets of evidence point in the same direction: Nonlawyers, when assisting and representing clients across a range of legal domains, consistently provide competent—and often high-quality—assistance.

1. Anecdotal Evidence

The first constellation of evidence consists mostly of agency assessments of their own nonlawyer practice. These overwhelmingly positive reports consistently suggest that nonlawyer representation enhances, rather than impedes, administrative processes.

The first appraisal we have surfaced comes from 1940, when the Veterans Administration offered an evaluation of its nonlawyer practitioners. According to the agency, these nonlawyer practitioners, who were generally affiliated with service organizations, tended to be "expert," "learned," "experienced in matters pertaining to veterans affairs," and to offer representation "of the highest calibre."[170]

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[167] *E.g.*, D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2125 (2012) (finding that a law student's offer of representation delayed the resolution of an individual's claim without increasing the individual's odds of success, although cautioning that the study "come[s] to no firm conclusion regarding a use-of-representation effect on the win rate" in the unemployment insurance context); D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 934 (2013) (finding that tenants furnished access to representation fared better than their unrepresented counterparts).

[168] *E.g.*, Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 900–02 (2016).

[169] *See* Michael Pusic, *Student Voices: Non-Lawyer Legal Services in Agency Immigration Litigation*, A2J LAB (June 30, 2025), https://a2jlab.org/non-lawyer-legal-services-in-agency-immigration-litigation/ [perma.cc/TZ8W-88AS] (making this point).

[170] ADMINISTRATIVE PROCEDURE IN GOVERNMENT, *supra* note 96, at 38.

The story at the Federal Security Agency was similar. In 1948, the agency's administrator reported that "[r]epresentation by nonattorneys is the rule, rather than the exception," and relayed that this situation had led to "no abuses or problems."[171] According to the administrator, "the liberal and informal policy" that the agency had adopted when authorizing lay practitioners had "paid dividends in good public relations and in encouraging representation which" had "proved helpful both to the claimants and to the agency."[172]

The experience at the Interstate Commerce Commission (ICC) (now subsumed into the Department of Transportation), was much the same. As of 1948, the ICC reported that 3,142 individuals were authorized to practice before the Commission; a little over half of these authorized practitioners (1,678) were nonlawyers.[173] According to the ICC's then-Chairman, these nonlawyers tended to be "well informed."[174] Concurring, representatives of the Association of ICC Practitioners reported that the presence of nonlawyers "discourage[d] undue formalism, and legalistic technicalities" and ensured that "all interested parties" had "a reasonable opportunity . . . to be heard."[175] In sum: "[T]here appears to be lacking any evidence of abuses or injury to the public by reason of practice by nonlawyers."[176]

Next up, in 1957, in *Conway-Bogue Realty Investment Co. v. Denver Bar Ass'n*, the Supreme Court of Colorado considered whether real estate brokers should be enjoined from preparing legal instruments.[177] In declining to enjoin the brokers' conduct, the court was swayed by testimony that showed that the majority of Coloradans had used lay services for "at least 50 years."[178] Yet, the bar had come forward with not even a shred of "evidence of any instance in which the public or any member thereof, layman or lawyer has suffered injury" as a consequence.[179]

Then, in 1963, the U.S. Supreme Court, in *Sperry v. Florida ex rel. Florida Bar*, weighed in on the activities of nonlawyer patent agents.[180] It observed that in response to inquiries, the U.S. Patent Office had reported that "there is no significant difference between lawyers and nonlawyers either with respect to their ability to handle the work or with respect to their ethical conduct."[181]

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[171] *1948 Hearing*, *supra* note 80, at 445–46 (statement of Maurice Collins, Acting Adm'r, Fed. Sec. Agency).

[172] *Id.* at 446.

[173] *Id.* at 191 (statement of Warren H. Wagner & Granville Curry, Ass'n of ICC Pracs.).

[174] *Id.* at 452–53 (statement of Walter M. W. Splawn, Chairman, ICC).

[175] *Id.* at 196 (statement of Warren H. Wagner & Granville Curry, Ass'n of ICC Pracs.).

[176] *Id.* at 195.

[177] 312 P.2d 998 (Colo. 1957).

[178] *Id.* at 1007.

[179] *Id.*

[180] 373 U.S. 379 (1963).

[181] *Id.* at 402.

In 1978, the Supreme Court of New Mexico, in *State Bar v. Guardian Abstract & Title Co.*, offered a similar assessment.[182] The underlying case arose when the New Mexico bar brought UPL charges against two title companies, seeking to enjoin their practices.[183] In evaluating these charges, the court noted that, at the time of trial, evidence demonstrated that nonlawyers had been handling "approximately ninety percent of" the county's "real estate loan closings" and had been "performing the acts complained of for approximately twenty years."[184] In all this time, the court observed, no evidence surfaced to indicate that the reliance on nonlawyers was "accompanied by any great loss, detriment or inconvenience to the public."[185] Yet, on the other side of the coin, there existed "uncontroverted evidence . . . that using lawyers for this simple operation considerably slowed the loan closings and cost the persons involved a great deal more money."[186]

The U.S. Supreme Court, in 1985, in *Walters v. National Ass'n of Radiation Survivors*, considered nonlawyer service representatives appearing before the Board of Veterans' Appeals (BVA).[187] The Court found compelling the "[r]eliable evidence" presented to the District Court that, collectively, nonlawyer representatives from four service organizations had a 16.6% success rate before the BVA, compared to an 18.3% success rate when represented by attorneys, and only a 15.2% success rate when unrepresented.[188]

Also in 1985, Jacob Wolf of the Social Security Administration (SSA) shared that nonlawyers frequently represented individuals before the SSA, also without incident. "[W]e have very few problems with nonlawyer representations before the Social Security Administration," he explained, "and we find the overall quality of their representation to be high."[189] Indeed, according to Wolf, even when claims are complex, lawyers did not "perform significantly better than experienced nonlawyers."[190]

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[182] 575 P.2d 943 (N.M. 1978).

[183] *Id.* at 945.

[184] *Id.*

[185] *Id.* at 949.

[186] *Id.*

[187] 473 U.S. 305, 327 (1985).

[188] *Id.* The service organizations and their individual success rates are as follows: American Legion (16.2%); American Red Cross (16.8%); Disabled American Veterans (16.6%); Veterans of Foreign Wars (16.7%). *Id.*

[189] Jacob M. Wolf, *Nonlawyer Practice Before the Social Security Administration*, 37 ADMIN. L. REV. 413, 415 (1985) (discussing nonlawyers in the SSA as part of the *Colloquium on Nonlawyer Practice Before Federal Administrative Agencies*). Wolf was, at the time, the Assistant to the Director of the Office of Policy and Procedure in the Office of Hearings and Appeals in the Social Security Administration. Donald J. Quigg, *Nonlawyer Practice Before the Patent and Trademark Office*, 37 ADMIN. L. REV. 409, 411 (1985).

[190] *Open Discussion*, 37 ADMIN. L. REV. 423, 426 (1985) (capturing the open discussion portion of the *Colloquium on Nonlawyer Practice Before Federal Administrative Agencies*); *see also* HERBERT M. KRITZER, THE JUSTICE BROKER: LAWYERS AND ORDINARY LITIGATION 170 (1990) (stating

The following year, the Administrative Conference of the United States (ACUS) added its voice to the chorus. After observing that a "substantial number of individuals involved in Federal 'mass justice' agency proceedings need and desire assistance in filling out forms, filing claims, and appearing in agency proceedings, but are unable to afford assistance or representation by lawyers," ACUS expressly encouraged lay representation.[191] Bolstering that recommendation was its finding that "experience and statistics indicate that qualified persons who are not lawyers generally are capable of providing effective assistance to individuals in mass justice agency proceedings."[192]

Finally, in 1995, when the New Jersey Supreme Court considered nonlawyer real estate broker practices in South Jersey, it explained that the "record fails to demonstrate that the public interest has been disserved" by that practice.[193] The court went on to state: "the absence of proof is particularly impressive, for the dispute between the realtors and the bar is of long duration, with the parties and their counsel singularly able and highly motivated to supply such proof as may exist."[194]

2. Studies Assessing the Value of Nonlawyer Representation (But That Lack Clear Comparisons to Lawyer Performance)

This next tranche of research sheds light on the value of nonlawyer representation, although it comes with two caveats: (1) Many of the studies in this part are limited owing to various methodological challenges or deficiencies; and (2) these studies do not offer a head-to-head matchup of lawyers versus nonlawyers.[195] Like the accounts above, they instead bear more broadly on the value of nonlawyer representation.

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that "nonlawyer representatives are used in a variety of administrative tribunals" and observing that, although "cases in some of these agencies can frequently involve technical interpretations of complex legal issues, there is no evidence that nonlawyer advocates fare any differently than licensed attorney advocates").

[191] Nonlawyer Assistance and Representation (Recommendation No. 86-1), 51 Fed. Reg. 25641, 25641–42 (July 16, 1986) (citations omitted). In December 2024, ACUS expanded on this and related recommendations by issuing best practices "for incorporating and increasing representation and assistance by permitting broader practice by nonlawyers in different types of adjudicative systems." Nonlawyer Assistance and Representation in Agency Adjudications (Recommendation 2024-7), 89 Fed. Reg. 106409, 106409 (Dec. 30, 2024).

[192] Recommendation No. 86-1, *supra* note 191, at 25642.

[193] *In re* Opinion No. 26 of the Comm. on the Unauthorized Prac. of L., 654 A.2d 1344, 1346 (N.J. 1995).

[194] *Id.*

[195] Most notably, some of these studies do not report response rates. This failure to report response rates raises concerns, including that the study's results may be affected by nonresponse bias. Typically, the extent to which we can generalize from respondents to the full sample of respondents *and* nonrespondents depends on both (a) the response rate and (b) the degree of difference between respondents and nonrespondents on relevant outcomes. Regarding the former, some survey methodologists caution that response rates below 50% or 60% may impair reliability and generalizability. *See*

The first study in this vein dates back to 1985 and involves an ABA survey of nonlawyer practice before federal administrative agencies.[196] To get a handle on then-existing lay practice, the ABA sent a questionnaire to all agencies, garnering a response rate of ninety-seven percent.[197] The ABA reported that "the overwhelming majority of agencies studied permit nonlawyer representation in both adversarial and nonadversarial proceedings," although, in practice, some "seem to encounter lay practice very infrequently."[198] The report continued:

> Most [agency respondents] reported they had not encountered any problems with misconduct by nonlawyers or any inability of nonlawyers to meet appropriate ethical standards . . . . Of those that voiced complaints about nonlawyers' skills in representation, most indicated that the problem they encounter most frequently is nonlawyers' lack of familiarity with procedural rules and tactics. The majority of responses suggest that nonlawyers do not pose any special practice problems, nor do they receive any special disciplinary consideration.[199]

All other studies in this Section are more recent. Of these, Thomas Clarke and Rebecca Sandefur conducted the first, evaluating the early implementation of Washington's LLLT program, which, as noted above, authorizes certified nonlawyers to assist clients with defined family law matters.[200] Drawing on structured interviews with LLLTs' clients (among others), Sandefur and Clarke found that "[c]lients uniformly reported that LLLTs provided competent assistance" and that this assistance improved their legal outcomes.[201]

In a 2021 study, Jason Solomon and Noelle Smith reached roughly the same conclusion after interviewing more than twenty key stakeholders (including lawyers, judges, educators, clients, and LLLTs themselves) and reviewing

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JoLaine Reierson Draugalis, Stephen Joel Coons & Cecilia M. Plaza, *Best Practices for Survey Research Reports: A Synopsis for Authors and Reviewers*, 72(1) AM. J. PHARM. EDUC. 1, 4 (2008). Others avoid naming strict numeric thresholds, noting that low response rates can still yield credible findings when respondent and nonrespondent differences are small, and that high response rates can still produce bias when such differences are large. *See* ROBERT M. GROVES & MICK P. COUPER, NONRESPONSE IN HOUSEHOLD INTERVIEW SURVEYS 6–7 (1998); DON A. DILLMAN, JOLENE D. SMYTH & LEAH MELANI CHRISTIAN, INTERNET, PHONE, MAIL, AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD 6 (4th ed. 2014).

[196] AM. BAR ASS'N, RESULTS OF THE 1984 SURVEY OF NONLAWYER PRACTICE BEFORE FEDERAL ADMINISTRATIVE AGENCIES 1 (1985).

[197] *Id.*

[198] *Id.*

[199] *Id.*

[200] THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 5–6 (2017).

[201] *Id.* at 6, 9.

additional client testimonials that the LLLT board had gathered.[202] Clients, Solomon and Smith found, described "overwhelmingly positive experiences with LLLTs."[203] Attorneys who worked with LLLTs in a variety of contexts likewise reported high satisfaction with the practitioners' work.[204] The same was true for many judges and commissioners, some of whom reported efficiency gains in cases involving LLLTs and "that LLLT work product is often higher quality and easier for the court to consume than attorney work product."[205]

Similar evidence of nonlawyer effectiveness has emerged from Minnesota, which recently made its licensed paraprofessional program permanent.[206] The Minnesota Supreme Court committee tasked with overseeing the program surveyed paraprofessionals' clients as part of the interim pilot evaluation, and "15 of 17 respondents were satisfied or very satisfied with the services they received."[207] The same number "were likely or very likely to recommend the services of a legal paraprofessional to their family or friend."[208] Further, supervising attorneys who responded to the survey (twelve out of thirteen) reported being "[*v*]*ery satisfied* with the quality of work provided by paraprofessionals under their supervision, and no respondents reported being dissatisfied."[209] Of the fourteen judge-respondents, nine "agreed that paraprofessionals displayed appropriate decorum in the courtroom," eight "reported paraprofessionals were aware of applicable court rules," and eleven "agreed paraprofessionals observed courtroom courtesies."[210] Notably, however, the samples were small, and response rates were not especially high (34% for invited judicial officers, 48% for invited supervising attorneys, and an undisclosed response rate for clients), so these findings should be taken with a grain of salt.[211]

Data from Utah tells a similar story. In particular, between June 2021 and June 2024, CJWs at Utah's Timpanogos Legal Center helped clients seek a total of 225 domestic violence protective orders; the court issued an ex parte order in 205 cases and denied the order in only 20.[212] Of the 205 cases with ex

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[202] SOLOMON & SMITH, *supra* note 129, at 5–6.

[203] *Id.* at 9.

[204] *Id.* at 12.

[205] *Id.* at 13. Unfortunately, Solomon and Smith do not report the response rates of interviewed stakeholders, limiting our ability to assess the generalizability of their findings. For how nonresponses can generate nonresponse bias that can skew results, see *supra* note 195.

[206] Order Amending Rules Governing Legal Paraprofessional Pilot Project, No. ADM19-8002, at 2 (Minn. Sep. 16, 2024).

[207] STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, FINAL REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT 8 (2024).

[208] *Id.*

[209] *Id.* at 7.

[210] *Id.* at 8.

[211] *Id.* at 5–6. For a discussion of response rates, and how low response rates affect the reliability and generalizability of results, see *supra* note 195.

[212] LEGAL AID ASS'N OF CAL., INCREASING ACCESS TO JUSTICE THROUGH COMMUNITY JUSTICE WORKERS: A PROPOSAL FOR CALIFORNIA 8 (2024).

parte orders issued, the court denied final orders in only 17.[213] Notably, this success rate stacked up favorably as against the statewide average: "[C]lients receiving legal services from an advocate [were] roughly twice as likely to receive a protective order," as compared to individuals generally (who reflected a mix of lawyer-represented and self-represented individuals).[214]

Alaska's CJW program, too, is demonstrating initial successes, based on data collected between 2018 and 2024, which focused on CJWs' impact on Supplemental Nutrition Assistance Program (SNAP) benefit denials. Due to a confluence of events, between 2022 and 2023, the Alaska Legal Services Corporation (ALSC), which pioneered the CJW concept, saw a 2,000% increase in SNAP benefits delay and denial cases.[215] These cases came to comprise one-third of ALSC's entire caseload.[216] During this SNAP crisis, approximately sixty CJWs were trained to take SNAP cases, expanding the reach of the then-twenty-five staff attorneys at ALSC.[217] Their success rate in resolving clients' SNAP delay issues during this pilot period: one hundred percent.[218] As of 2025, across over 1,400 cases, Alaska's CJWs have assisted ALSC clients in recovering $23.6 million in food security benefits.[219]

In late 2024, the Arizona Administrative Office of the Courts gathered qualitative and quantitative data on its Legal Paraprofessional (LP) program, administering four separate surveys: to attorneys; to judicial officers; to clients who had been served by LPs; and to LPs themselves.[220] Responses were encouraging. Most judges who responded to the survey agreed or strongly agreed that LPs were "aware of applicable court rules" (88%) and that LPs "displayed appropriate courtroom decorum" (90%).[221] Many attorneys likewise agreed or strongly agreed to these points as well: 55% and 59%; respectively.[222] Similar percentages of judges (58%) and attorneys (59%) agreed "that hearings with a LP take less time than hearings with self-represented litigants," although judges and attorneys (65% and 67%; respectively) also agreed that LPs "take long-

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[213] *Id.*

[214] *Id.* at 9; *see also* LUCY RICCA & ERIC HELLAND, RAND INST. FOR CIV. JUST., CONFERENCE ON ACCESS TO JUSTICE IN CALIFORNIA: CHALLENGES AND POLICY INNOVATIONS 19 (2024) (noting that discussion during the conference proceedings indicated that the Timpanogos Legal Center CJW program "has been very well received and that advocates, agencies, and clients love it" and that "[t]he program's success has been buoyed by victims' trust of advocates who already work within their community").

[215] Joy Anderson, Sarah Carver & Robert Onders, *Community Justice Workers: Part of the Solution to Alaska's Legal Deserts*, 41 ALASKA L. REV. 9, 12–15 (2024).

[216] *Id.* at 14.

[217] *Id.* at 14, 19.

[218] *Id.* at 19–20.

[219] MATTHEW BURNETT ET AL., *supra* note 146, at 2.

[220] ARIZ. SUP. CT., ASSESSING ARIZONA'S LEGAL PARAPROFESSIONALS: 2024 PROGRAM SURVEY 4 (2024). For discussion of Arizona's program, see *supra* note 132 and accompanying text.

[221] ARIZ. SUP. CT., *supra* note 220, at 19.

[222] *Id.*

er in hearings than an attorney,"[223] and that LPs could benefit from additional training on rules of procedure and evidence.[224] Client opinions on LPs were very high: 100% of the thirty-four client-respondents were satisfied or highly satisfied with the services they received and with "how their LP responded to their case and their needs."[225] With respect to LP communication skills, 97% of clients were satisfied or highly satisfied.[226] Much like with the Minnesota study discussed above, however, response rates were not especially high (38% for judicial officers, and an undisclosed response rate for attorneys' clients),[227] so these findings similarly should be viewed with caution.

Finally, in 2026, early findings from Delaware's Qualified Tenant Advocates (QTA) program showed that these advocates, working within the Civil Legal Aid Society (CLAS), were involved in 78% (3,755 cases) of the organization's total housing cases (4,829 cases)—providing a range of services, from limited advice to full representation in court.[228] Across the more than 3,300 cases that had closed by the end of 2025, QTAs had "assisted tenant-clients in securing or preserving approximately $4.8 million in housing-related financial assistance, primarily by maintaining access to housing subsidies or vouchers."[229] Further, in 38% of these closed cases, QTAs helped tenants achieve "at least one 'substantial outcome,'" such as eviction prevention, subsidies preservation, or rent reduction.[230]

3. Studies Comparing Nonlawyers to Lawyers

The third tranche of evidence more expressly compares the value of lawyers to their nonlawyer counterparts. The studies we catalog here, in our view, bear most directly on the matter at hand. That said, each of these studies is observational, and in each, there is a real possibility of selection effects. Clients may intentionally choose nonlawyer providers for cases that appear simpler or easier to win, which could help explain why outcomes for lawyer- and nonlawyer-representation look similar.[231] In addition, when clients hire lawyers, as op-

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[223] *Id.* at 14.

[224] *Id.* at 14, 19.

[225] *Id.* at 22.

[226] *Id.*

[227] *Id.* at 5, 7.

[228] JAMES TEUFEL, MATTHEW BURNETT & REBECCA L. SANDEFUR, AM. BAR FOUND., RESEARCH BRIEF: ANALYSIS OF THE SOCIAL AND ECONOMIC IMPACT OF DELAWARE QUALIFIED TENANT ADVOCATES (2022–2025), at 3 (2026).

[229] *Id*.

[230] *Id*.

[231] Crucially, we do not know what would happen if representation were randomly assigned—hence the need for the gold standard randomized controlled trial, as discussed above. *See supra* notes 167–169 and accompanying text. Even so, logically, many of the same selection problems would also afflict (most) studies comparing represented and unrepresented parties; yet those studies find a benefit

posed to nonlawyers, they may have higher expectations for professional practice, which might help to explain findings concerning client satisfaction.

With those caveats, the first study pitting lawyers against nonlawyers was published in the *Yale Law Journal* in 1938. The underlying survey was started five years before, when, at the behest of the Association of American Law Schools, Charles Clark, then Dean of Yale Law School, partnered with Emma Corstvet to "look into the question of the lawyer's service to the general public"[232] and to assess "how the needs of the community for legal service were being met."[233] For leverage on the question, a team of supervised researchers interviewed 412 residents along with 61 businesses (473 individuals total) from New Haven and Hartford, Connecticut; about half of these respondents had "had legal transactions of one sort or another during the past year, . . . [and] some had more than one."[234] Of the residents, 35% sought some sort of outside advice: 86% from a lawyer, and 14% from a nonlawyer adviser, such as an insurance company, realtor, auto club, or bank. Generally, those who sought some sort of outside advice were more satisfied than those who did not (satisfaction rates ranged from 48% to those who consulted someone, versus 28% for those who did not).[235]

From there, however, the data took what Clark and Corstvet characterized as an "intriguing but strange" turn:

> If we deal with practicing lawyers alone, we find that . . . the extent of dissatisfaction was somewhat higher than for all advisers. To put it in another way, where advice was sought of other than lawyers, it was almost invariably reported as satisfactory, whereas the dissatisfied interviewees had consulted lawyers in all cases but one. The reasons given for dissatisfaction with the lawyer were various: Many charged him with fraud, incompetence, delay; one that he lost the case.[236]

Ultimately, they reported: "When people seek outside advice they are much more apt to be satisfied than dissatisfied by the outcome, but when they seek it of a practicing lawyer, satisfaction, while still much greater than dissatisfaction, is not quite as high as for other advisers."[237]

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from representation. *See infra* note 340 and accompanying text. *But cf.* Greiner & Pattanayak, *supra* note 167 (concerning an offer of representation in a study deploying random assignment).

[232] Clark & Corstvet, *supra* note 162, at 1272 n.2 (quoting ASS'N AM. L. SCHOOLS, HANDBOOK 125 (1933)).

[233] *Id.* at 1272.

[234] *Id.* at 1273, 1276. Because some had more than one legal "transaction" there were 557 transactions in all. *Id.* at 1276–77. According to the researchers, "[r]efusals to answer were negligible—too few to cast doubt upon the results." *Id.* at 1274.

[235] *Id.* at 1277–80.

[236] *Id.* at 1281.

[237] *Id.*

The next major study was published in 1987. In it, Donald Duquette and Sarah Ramsey assessed the representation of children in abuse and neglect cases.[238] In particular, Duquette and Ramsey zeroed in on a National Center for Child Abuse and Neglect demonstration project in Genesee County, Michigan, wherein a range of specially trained nonlawyer providers—including law students and lay volunteers—represented children in civil protection proceedings.[239]

Their work yielded two striking findings. First, trained nonlawyers significantly outperformed untrained court-appointed lawyers on various process measures (e.g., investigation, contact with child and family, advocacy) and outcomes measures (e.g., more specific court orders for treatment and assessment, quicker case resolutions, and fewer court hearings taken to resolve the case).[240] Second, although trained nonlawyers performed markedly better than untrained lawyers, they performed just as well as trained lawyers.[241] In short, although the study offers compelling evidence that specialized training enhances the quality of representation, it casts doubt on whether a law license alone has the same effect.

In a major study published the following year, Zona Fairbanks Hostetler reached a similar conclusion. For this study, prepared at the behest of the Administrative Conference of the United States, Hostetler focused on the SSA and the Immigration and Naturalization Service (INS) (two agencies where nonlawyers can represent individuals).[242]

First, Hostetler evaluated outcome data. Crunching the numbers, Hostetler found that individuals represented by nonlawyers fared nearly as well as those represented by lawyers and, crucially, substantially better than those without representation.[243] For example, SSA statistics from 1983 showed that "[c]laimants represented by nonlawyers were more likely to win their cases than they were if unrepresented. Moreover, representation by nonlawyers resulted in reversal rates after hearings that were almost as high as those achieved by lawyers."[244] The reversal rate was 43.7% when the claimant was

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[238] Duquette & Ramsey, *supra* note 157, at 341–42.

[239] *Id.* at 350–58.

[240] *Id.* at 342–43, 350–56, 365–66, 389. The trained nonlawyers included both nonlawyer volunteers and law students.

[241] *Id.* at 362, 390 (summarizing their finding that "[n]onlawyers carefully selected and trained and under lawyer supervision performed as well as trained lawyers in representing children, and certainly performed better than lawyers without special training").

[242] Hostetler, *supra* note 93, at 86.

[243] *Id.* at 88. This conclusion was supported by both quantitative data on hearing outcomes and qualitative interviews with agency officials and representatives from relevant legal aid and social services agencies. *Id.* at 87.

[244] *Id.* at 103–04.

unrepresented, 54.5% when represented by a nonlawyer, and 59% when represented by a lawyer.[245]

Hostetler then fortified her quantitative results with interviews of agency officials and representatives from legal aid and social services agencies. In these conversations, agency personnel gave nonlawyer representatives high marks.[246] According to Hostetler: "[T]here is little perceived difference in the quality of help between lawyers as a class and nonlawyers as a class."[247] Nonprofit employees expressed a similar sentiment. In interviews, these employees—with boots-on-the-ground experience—emphasized the value of nonlawyers' specialized training in filling out agency forms and answering claimants' questions and also reported that "their experience indicated that nonlawyers could be trained to perform virtually all functions in administrative agency proceedings."[248]

Next up, in July 1990, the State Bar of California published a series of surveys concerning "legal technicians," another word for nonlawyer professionals.[249] The survey that is most relevant for our current purposes compiled the views of California consumers who had appeared in court without a lawyer. Researchers sent the survey to 27,450 individuals; of these, 292 responded, yielding a response rate of 1.1%.[250] Over half of the respondents (53%) reported that, although they formally appeared pro se, "someone helped them prepare their court papers."[251] Of these helpers, one-quarter had been lawyers and three-quarters had been nonlawyers.[252]

Where it gets interesting is when it comes to satisfaction. In particular, when assessing satisfaction between the two cohorts, the researchers found: "While 64% of those who received some assistance from lawyers were happy overall with the service and 67% would use a lawyer again, of those who received assistance from a [nonlawyer] 76% were happy with the service and would use such a provider again."[253] This would suggest that (like in Connect-

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[245] *Id.*

[246] *Id.* at 103 (reporting on "a high level of satisfaction with nonlawyer representatives").

[247] *Id.*

[248] *Id.* at 105. By contrast, they opined that lawyers "rarely, if ever, received any training in these functions as part of their law school curricula." *Id.*

[249] CAL. BAR, REPORT OF THE STATE BAR OF CALIFORNIA COMMISSION ON LEGAL TECHNICIANS 1 (1990) [hereinafter CALIFORNIA REPORT].

[250] *Id.*, Exhibit 2, at 1, 2. Contemporary survey-methods scholarship cautions against using absolute response-rate thresholds as validity tests. *See, e.g.*, Robert M. Groves & Emilia Peytcheva, *The Impact of Nonresponse Rates on Nonresponse Bias: A Meta-Analysis*, 72 PUB. OPINION Q. 167, 168–69 (2008). Still, because this was a single-wave administrative mailing with no weighting or follow-up, we cannot be especially confident about the representativeness of respondents, and the results should be interpreted as suggestive rather than necessarily representative of all California pro se litigants.

[251] CALIFORNIA REPORT, *supra* note 249, Exhibit 2, at 2.

[252] *Id.* Exhibit 2, at 2–3.

[253] *Id.* at 14 (main report).

icut), California's consumers were comparatively *more* satisfied with services furnished by nonlawyer providers.[254] Also interesting, when consumers were asked why they sought the assistance of a lawyer as against a nonlawyer (or vice versa), consumers identified "cost (69%), convenience (39%), expertise/knowledge (37%), sensitivity/communication (31%) and control of the case (22%)."[255] These results tend to suggest that consumers care about quality—but they care, perhaps even more, about other variables.

Next, in the 1990s, Herbert Kritzer, a prominent political scientist and law professor, compared the effectiveness of lawyers and nonlawyers—here, qualified lay agents—in the context of four administrative settings in Wisconsin: unemployment compensation appeals, tax appeals, Social Security disability appeals, and "labor grievance arbitrations."[256] Kritzer's methodology involved both observing hearings in each of the four venues and assessing quantitative outcomes. He then supplemented this research with participant surveys and stakeholder interviews. Broadly, Kritzer concluded that "nonlawyers can be effective advocates and, in some situations, better advocates than licensed attorneys."[257]

Kritzer found nonlawyers to be effective in three of the four settings that he studied. First, in unemployment compensation appeals, Kritzer analyzed the likelihood of appellant success and found "no indication that, overall, lawyers are more successful than [nonlawyer] agents."[258]

Similarly, in Social Security appeals, Kritzer identified a "small but consistent difference between attorney and nonattorney representatives," but found it "striking how small that difference actually is."[259] Where he detected "a clear difference" between representatives was "with regard to the specialized expertise they bring."[260]

Likewise, in labor grievance arbitrations, Kritzer observed that "it is not the simple lawyer/nonlawyer distinction that accounts for the difference [in likelihood of winning]. Rather, it appears to be more a function of specializa-

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[254] *Id.* It is curious that respondents consulted a lawyer, but then appeared in court pro se. It could be that some were so dissatisfied with their lawyers that they fired their lawyers and appeared on their own—and that could explain the relatively high rates of dissatisfaction with the services furnished by lawyers. By comparison, many nonlawyers, it seems, were providing services in contravention of California's UPL laws (essentially under the table), and so they could not have accompanied many of these clients into court.

[255] *Id.*, Exhibit 2, at 3.

[256] KRITZER, *supra* note 158, at 21–22. For the unemployment compensation appeals and the tax appeals, Kritzer also included a comparison to unrepresented parties. *Id.*

[257] Kritzer, *supra* note 166, at 100.

[258] KRITZER, *supra* note 158, at 51.

[259] *Id.* at 148–49. According to Kritzer, "the big difference in Social Security appeals appears between the represented and unrepresented claimant." *Id.* at 148.

[260] *Id.*

tion. Specialist nonlawyers and specialist lawyers appear to be better advocates than nonspecialist lawyers."[261]

Where Kritzer perceived issues with nonlawyer advocacy was in the tax appeals setting. Here, it was not the nonlawyer practitioners' lack of "substantive expertise," but rather their "lack of procedural expertise."[262] The nonlawyers he deemed problematic, who generally did not handle large numbers of cases before the Tax Appeals Commission, did not appear to understand evidentiary procedures and hearing formalities.

Then, in 2000, Elaine Tackett conducted a rigorous survey of Administrative Law Judges (ALJs) concerning representatives in the SSA.[263] Tackett sent the survey instrument to 350 randomly selected ALJs and received responses from 146, yielding a response rate of 42%.[264] Ultimately, she found that the majority of ALJs (60%) ranked nonlawyer representation as good or satisfactory.[265] (In comparison, 88% of ALJs gave attorneys a passing grade.)[266] When asked who furnished *better* representation, 34% said that nonlawyers outperformed lawyers, while 65% said the opposite.[267] Of the ALJs who believed that "[m]ost paralegals perform better, or significantly better, than most attorneys," most chalked nonlawyers' superiority up to their more diligent preparation.[268] Of those who believed "[m]ost paralegals perform[] less, or significantly less, well than most attorneys," most attributed lawyers' superiority to the fact that "most paralegals are less familiar with the relevant substantive law."[269] All told, Tackett concluded that, in the SSA, nonlawyers, "overall . . . provide competent representation," even though most ALJs also believed that lawyers furnished somewhat higher-quality services.[270]

In 2017, Professors Anna Carpenter, Alyx Mark, and Colleen Shanahan studied legal representation in another institutional setting where nonlawyers are expressly authorized to practice: DC's Office of Administrative Hearings (OAH).[271] An administrative court that hears de novo appeals from underlying District determinations regarding a worker's qualification for unemployment

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[261] *Id.* at 185.

[262] *Id.* at 108.

[263] Elaine Tackett, *Paralegal Representation of Social Security Claimants: A Study of the Perceptions of Social Security Administrative Law Judges on the Quality of Representation of Social Security Claimants by Paralegals*, 16 J. PARALEGAL EDUC. & PRAC. 67, 67 (2000).

[264] *Id.* at 68.

[265] *Id.* at 70. In the survey, Tackett specifically dubbed nonlawyers "paralegals."

[266] *Id.*

[267] *Id.*

[268] *Id.*

[269] *Id.*

[270] *Id.* at 73.

[271] Carpenter et al, *supra* note 160, at 1023, 1030.

benefits,[272] the OAH permits either the employer or employee to be represented by lawyers or nonlawyers, at their discretion.[273]

Focusing on the employer side of the equation (because that is where nonlawyers—who tended to be HR-firm employees—frequently supplied representation), Carpenter et al. present a complex set of findings.[274] In the aggregate, they found that lawyer-represented employers outperformed nonlawyer-represented employers across various metrics. Lawyers were more likely to ensure client attendance at hearings, disclose and introduce documents, and present witness testimony.[275] When an unrepresented worker squared off against a lawyer-represented employer, the worker won only 47.6% of the time; the rate jumped to 67.5% when the worker squared off against a nonlawyer.[276]

Yet, these disparities vanished in the subset of cases where a nonlawyer representative actually *appeared* at the hearing. (In many hearings, the nonlawyer, ostensibly representing the employer, never showed up.)[277] In *those* cases, nonlawyers notched comparable win rates to their JD-toting counterparts, although, even there, nonlawyers were somewhat more constrained in the ways they challenged judges on issues of substantive law or procedure. The authors concluded that the reason for nonlawyers' overall underperformance rested not so much in individual capability, but in institutional design: the HR firms that employ nonlawyers—as opposed to the nonlawyers themselves—were making cost-driven decisions to avoid hearings altogether.[278] Thus, the authors found that nonlawyers, when permitted to fully participate, could offer representation of comparable quality, but their effectiveness was structurally constrained.[279]

The most recent available empirical evidence comes from the Board of Veterans' Appeals (BVA) 2024 Annual Report. Echoing Hostetler's findings from the 1980s, this assessment found that persons represented by nonlawyers tended to fare slightly worse than someone represented by a lawyer and slightly better than someone without representation. In FY2024, the BVA—the administrative tribunal that renders appellate decisions on veterans' benefits claims—granted relief in 42.7% of cases where the appellant was represented by an attorney,

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[272] *Id.* at 1033.

[273] *Id.* at 1032–33; D.C. Mun. Regs. tit. 1, § 2982.1 (2024).

[274] Carpenter et al., *supra* note 160, at 1032, 1036 (explaining that, whereas workers were almost exclusively represented by lawyers or supervised clinical law students, employers were represented more than twice as often as workers (42% vs. 18%) and were more frequently represented by nonlawyers employed by third-party HR firms).

[275] *Id.* at 1042.

[276] *Id.* at 1040–41.

[277] *Id.* at 1041, 1044.

[278] *Id.* at 1044–45.

[279] *Id.* at 1044.

37.5% of cases where the appellant was represented by an accredited nonlawyer agent, and 29.7% of cases where the claimant was unrepresented.[280]

C. Evidence from Overseas

The evidence from outside the United States arrives at the same basic conclusions. In the 1980s, at the request of the then-Lord Chancellor's Department, Professors Hazel Genn and Yvette Genn studied nonlawyer performance in administrative tribunals in England and Wales: Social Security Appeal Tribunals, Immigration Adjudicators, Industrial Tribunals, and Mental Health Review Tribunals.[281] Drawing on over 3,700 case files and nearly 500 observed hearings, the researchers examined how representatives influenced outcomes for claimants.[282] Their central finding was that representation, of any kind, significantly increased claimants' odds of success.[283]

The researchers also conducted 735 interviews where they probed the value of lawyers as against nonlawyers.[284] These interviews revealed that "[f]ew . . . believe[] that lawyers were necessarily best equipped to conduct representation in tribunals."[285] Similar to Kritzer and Hostetler, Genn and Genn concluded that, when it came to quality representation, "specialisation and experience were the most important qualifications."[286]

Also in the 1980s, W.A. Bogart and Neil Vidmar undertook an empirical study into nonlawyer independent paralegals in Ontario, Canada, at the request of the Ontario Task Force on Paralegals.[287] In their assessment, the researchers created an empirical profile of paralegal activity drawn from various sources, including surveys and interviews with stakeholder groups.[288] The most perti-

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[280] DEP'T OF VETERANS AFFS. (VA) BD. OF VETERANS' APPEALS, ANNUAL REPORT 46 (FY 2024) [hereinafter VA 2024 STUDY]. Nonlawyer agents are individuals who have passed a VA-administered exam and fulfilled continuing legal education requirements. 38 C.F.R. § 14.629 (2026).

[281] *See generally* HAZEL GENN & YVETTE GENN, THE EFFECTIVENESS OF REPRESENTATION AT TRIBUNALS: REPORT TO THE LORD CHANCELLOR (1989) (reporting on research relating to the effectiveness of representation in administrative tribunals).

[282] *Id.* at 7.

[283] *Id.* at 243. This finding endured "when other measurable factors related to outcome" were held constant. *Id.* at 107.

[284] *Id.* at 7–9.

[285] *Id.* at 245.

[286] *Id.* at 245–46. That said, the study does not offer a direct, *quantitative* comparison of outcomes between lawyers and nonlawyers. The strongest comparative conclusion the authors offer is that many tribunals and stakeholders do not view lawyers as inherently more effective.

[287] W.A. Bogart & Neil Vidmar, *An Empirical Profile of Independent Paralegals in the Province of Ontario*, *in* REPORT OF THE TASK FORCE ON PARALEGALS 145–75 (Ron W. Ianni ed., 1990) (on file with author). At the time of the study, independent paralegal practice in Ontario was largely unregulated. *Id.* at xii. The Attorney General of Ontario convened the Ontario Task Force on Paralegals to assess paralegal activities and to make recommendations on their future regulation. *Id.* at xiii.

[288] Bogart and Vidmar conducted interviews with paralegals (n=45), clients of paralegals (n=39), and others with knowledge of paralegals (for example, government officials and lawyers), in addition

nent line of inquiry explored client use of, and satisfaction with, paralegals.[289] Here, the researchers interviewed thirty-nine clients, about half of whom also had experience using a lawyer; these individuals believed paralegals were less costly than lawyers and more responsive and attentive.[290] These clients frequently mentioned "paralegals' speed, care with detail, attention to their clients, and their practice of not delegating matters so that clients deal only with the paralegals whose services are retained and not with underlings."[291]

In the late 1990s, Richard Moorhead, Alan Paterson, and Avrom Sherr examined the differences between nonlawyers and lawyers (specifically, solicitors) in England and Wales.[292] Their inquiry considered welfare benefits, debt, housing, and employment cases, where nonlawyers are permitted to supply certain types of assistance.[293]

This effort is notable for its rigor. Namely, to study the effectiveness of nonlawyers versus lawyers, the researchers capitalized on a rare opportunity provided by a large-scale pilot program (the Civil Nonfamily Block Contracting Pilot), which introduced a contested market between solicitors (lawyers) and not-for-profit nonlawyer agencies (NFPs).[294] They then employed a multifaceted, triangulated methodology to study the performance of these professionals. First, they gathered detailed quantitative data on 82,705 closed cases.[295] Second, they implemented an external peer-review process, wherein trained solicitor reviewers assessed closed case files from both solicitor firms and NFPs using a standardized five-point competence scale.[296] Third, they deployed anonymous "model clients" to pose as real clients and assess adviser performance in live interactions.[297] Finally, to gather client satisfaction data, they conducted a postal survey of over 3,000 real clients, yielding 867 usable responses.[298]

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to conducting surveys of the community and administrative agencies. *Id.* at 149–50. With the possible exception of the telephone survey of the community, however, their findings do not support population-level inferences. *Id.* at 151. The researchers also consulted Law Society files alleging substandard work by paralegals. *Id.* at 158. Among other findings, this assessment suggested that "the great majority of complaints about paralegals come mostly from lawyers." *Id.* at 175.

[289] *Id.* at xi. The study did not address the issue of comparability with lawyer performance and quality of service.

[290] *Id.* at 150, 158. Public submissions to the Task Force and a telephone survey of households also revealed public satisfaction with paralegal services. *Id.* at 164. The telephone survey of households is more readily generalizable, having been based on a random sample of Ontario households. *Id.* at 151.

[291] *Id.* at 158.

[292] Moorhead et al., *supra* note 159, at 777.

[293] For the ins and outs of the assistance that nonlawyers can supply, see *id.* at 773.

[294] *Id.* at 774–75.

[295] *Id.* at 778.

[296] *Id.* at 779.

[297] *Id.* at 780–81.

[298] *Id.* at 782.

Remarkably, across a broad range of measures, Moorhead et al. found that nonlawyers were not only effective, but, in many respects, *outperformed lawyers*. In terms of client satisfaction, nonlawyer advisers scored slightly higher overall: 76% of nonlawyer clients rated their service as excellent or very good compared to 70% of solicitor clients, with statistically significant differences favoring nonlawyers across several dimensions such as emotional attentiveness, having enough time for them, and perceived advocacy.[299] Outcome data further supported nonlawyer effectiveness: clients of nonlawyers were more likely to obtain concrete benefits such as lump sum payments, new or increased regular payments, and the prevention of adverse third-party action.[300]

Summarizing their findings, the authors wrote:

> [T]hese results indicate a statistically significant difference between solicitors and [nonlawyers] in terms of the quality of their contracted work. [Nonlawyers] had clients with slightly higher satisfaction ratings and got significantly better results, and their work on cases was more likely to be graded at higher levels of quality by experienced practitioners working in their field.[301]

Last but not least, in 2011, a team of experts, also in England and Wales, assessed the quality of 101 wills prepared by a mix of solicitors and non-solicitor providers. The findings were sobering: twenty-five percent of wills were assessed as failing to meet basic quality standards. [302] But critically, the experts found no difference in the failure rates; whether prepared by a solicitor or non-solicitor, quality remained constant.[303]

III. LESSONS FROM NONLAWYER PRACTICE

Above, we cataloged a range of evidence that gauges whether nonlawyers can competently supply some legal services. What can we learn from this exercise? Below, we highlight five lessons. In Section A, we observe that trained nonlawyers can be effective advocates,[304] and in Section B, we review the importance of specialized training.[305] Section C argues that the lawyer-versus-nonlawyer framework for comparing efficacy is inappropriate given the reality that lawyers, in state courts across the country, are the exception, not the rule.[306] Finally, Section D poses questions about who should bear the burden of

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[299] *Id.* at 784–86.
[300] *Id.* at 786–87.
[301] *Id.* at 789.
[302] LEGAL SERVS. CONSUMER PANEL, *supra* note 163, at 2–3.
[303] *Id.*
[304] *See infra* notes 309–328 and accompanying text.
[305] *See infra* notes 329–336 and accompanying text.
[306] *See infra* notes 337–346 and accompanying text.

proof in regulatory reform discussions,[307] and Section E argues that it is time to stop basing decision-making on untested assumptions of consumer harm.[308]

A. Nonlawyers Can Supply Legal Services with Competence and Integrity

The first obvious takeaway is that trained nonlawyers can deliver a wide range of legal services competently and professionally.[309] Having a JD may be helpful, but in many domains, it simply is not necessary. The chart below offers a summary.

[307] *See infra* notes 347–349 and accompanying text.

[308] *See infra* notes 350–356 and accompanying text.

[309] Our conclusion here is on par with the conclusion by others who have similarly sifted through available evidence. *See, e.g.*, Amicus Brief of Professor Rebecca L. Sandefur in Support of Plaintiffs' Motion for a Preliminary Injunction at 11, Upsolve, Inc. v. James (S.D.N.Y. Mar. 2, 2022) (No. 1:22-cv-627-PAC) (explaining that various attempts to measure the value of nonlawyer practice "reflect a consistent theme: nonlawyer providers can be highly effective when they are (1) trained and specialized, and (2) the issues at hand do not raise complex questions of substantive law"); Stefanie K. Davis, *Access to Justice* ("Research suggests that, in certain circumstances, parties who are represented or assisted by a nonlawyer have an equal or better chance of succeeding than either unrepresented parties or even parties assisted by an attorney."), *in* A GUIDE TO FEDERAL AGENCY ADJUDICATION 229, 237 (Jeremy S. Graboyes ed., 3d ed. 2023) (citation omitted); Recommendation No. 86-1, *supra* note 191, at 25641–42 ("Federal agency experience and statistics indicate that qualified persons who are not lawyers generally are capable of providing effective assistance to individuals in mass justice agency proceedings."); *accord* Letter from Maureen K. Ohlhausen, Dir., Off. of Pol'y Plan., Jeffrey Schmidt, Dir., Bureau of Competition & Michael A. Salinger, Dir., Bureau of Econ., to Carl E. Testo, Couns., Rules Comm. of the Superior Ct. (Conn.) 6 (May 17, 2007) (stating that the FTC is "not aware of evidence of consumer harm arising from [the provision of legal services by nonlawyers] that would justify foreclosing competition"); Walter Gellhorn, *Conference: Law and Lawyers in the Modern World: Afternoon Session*, 15 U. CIN. L. REV. 176, 208 (1941) ("It has been proved empirically that in certain matters non-lawyers have effectively and honorably served their principals.").

Table 1: Studies that Compare Lawyer and Nonlawyer Performance (from the U.S., U.K., & Canada)		
Author(s) and Year Published	**Methodology**	**Takeaway**[310]
Clark & Corstvet (1938)[311]	Surveyed 412 respondents in Connecticut.	Clients were modestly more satisfied with nonlawyers (as against lawyers).
Duquette & Ramsey (1987)[312]	Assessed child abuse proceedings in Michigan.	Performance of trained nonlawyers matched trained lawyers and surpassed untrained lawyers.
Hostetler (1988)[313]	Assessed outcome data and conducted interviews in SSA and INS.	Lawyers notched slightly higher reversals than nonlawyers (and both outperformed pro se litigants by a wider margin). Interviewees found performance to be comparable.
Genn & Genn (1989)[314]	Assessed outcome data, observed hearings, and conducted 735 interviews—three administrative tribunals in England and Wales.	Representation of any kind significantly improved individuals' likelihood of success. Performance comparable between lawyers and nonlawyers.
Bogart & Vidmar (1990)[315]	Surveyed 39 clients of paralegals in Ontario, Canada, about half of whom also had experience with a lawyer.	Clients found paralegals to be less costly than lawyers and more responsive and attentive.
California State Bar (1990)[316]	Surveyed 292 respondents in California.	Clients were modestly more satisfied with nonlawyers (as against lawyers).
Kritzer (1998)[317]	Assessed administrative proceedings in Wisconsin across four kinds of tribunals.	In three of the four settings, no appreciable difference. In one setting (tax appeals), lawyers more effective.
Tackett (2000)[318]	Surveyed 146 ALJs in the SSA.	ALJs reported that lawyers were modestly more effective than nonlawyers.

[310] Of course, these "takeaways" are, by their nature, somewhat coarse, losing nuance and specificity. For a more textured and granular understanding, we encourage readers to read our fuller summaries.

[311] Clark & Corstvet, *supra* note 162, at 1273, 1276, 1281.

[312] Duquette & Ramsey, *supra* note 157, at 390.

[313] Hostetler, *supra* note 93, at 86, 88, 103–04.

[314] GENN & GENN, *supra* note 281, at 7–9, 245–46.

[315] Bogart & Vidmar, *supra* note 287, at xii–xiii, 145–70.

[316] CALIFORNIA REPORT, *supra* note 249, at Exhibit 2 at 2, 14.

[317] KRITZER, *supra* note 158, at 21–22, 51, 108.

[318] Tackett, *supra* note 263, at 68, 70.

Moorhead, Paterson & Sherr (2003)[319]	Examined claims involving welfare benefits, debt, housing, and employment in England and Wales. Evaluated outcome data, engaged in peer review, deployed "model clients," and surveyed 867 clients.	Clients were modestly more satisfied with nonlawyers (as against lawyers). Furthermore, nonlawyers "got significantly better results, and their work on cases was more likely to be graded at higher levels of quality by experienced practitioners working in their field."[320]
UK Legal Services Consumer Panel (2011)[321]	Team of experts reviewed 101 wills prepared by mix of lawyers and nonlawyers in the UK.	No appreciable difference in quality.
Carpenter, Mark & Shanahan (2017)[322]	Assessed performance in the DC Office of Administrative Hearings.	Those represented by lawyers won more often than those represented by nonlawyers—but differences disappeared when nonlawyers actually appeared at hearings.
Board of Veterans' Appeals (2024)[323]	Measured ability to secure reversals in the BVA.	Lawyers slightly more effective than nonlawyers. Both lawyers and nonlawyers more effective than unrepresented individuals.

Again and again, studies show that specially trained nonlawyers can be effective advocates. In Duquette and Ramsey's study, the nonlawyer providers who received specialized training in abuse and neglect cases performed as well as specially trained lawyers and better than lawyers without the training.[324] Many of the nonlawyer advocates in mass justice agencies that Hostetler studied received training on agency forms and rules, and she noted "little perceived difference" in the quality between the nonlawyer group and the lawyer group.[325] Kritzer concluded that trained nonlawyers can be as or more effective than lawyers,[326] while Genn and Genn also found that, when it came to quality representation, specialization and experience mattered most.[327] The most rigorous study to evaluate the question, by Moorhead, Paterson, and Sherr, concluded that nonlawyers were not

[319] Moorhead et al., *supra* note 159, at 773, 777, 782.
[320] *Id.* at 789.
[321] LEGAL SERVS. CONSUMER PANEL, *supra* note 163, at 2–3.
[322] Carpenter et al., *supra* note 160, at 1023, 1030.
[323] VA 2024 STUDY, *supra* note 280, at 46.
[324] *See supra* notes 238–241 and accompanying text.
[325] Hostetler, *supra* note 93, at 103; *see supra* notes 242–248 and accompanying text.
[326] *See supra* notes 256–262 and accompanying text.
[327] *See supra* notes 281–286 and accompanying text.

only effective but, across a range of measures, *outperformed* lawyers—scoring higher on client satisfaction, delivering more favorable outcomes, and receiving higher quality ratings from trained solicitor reviewers.[328]

B. The Value of Specialized Training and Simplicity

Next, embedded in the studies we outline above are two specific lessons for policymakers who are rolling up their sleeves to *create* licensed paralegal programs. First, the evidence highlights the importance of specialized training.[329] For instance, when evaluating child abuse and neglect proceedings, Duquette and Ramsey found that specialized nonlawyers "performed as well as trained lawyers in representing children, and certainly performed better than lawyers without special training."[330] Likewise, Kritzer, studying nonlawyer representatives in administrative settings, emphasized that "the key to effective representation is the combination of three types of expertise: knowledge about the substance of the area, an understanding of the procedures used, and familiarity with the other regular players in the process."[331] Too, in Hostetler's study of nonlawyer representation before the SSA and INS, legal aid supervisors emphasized that nonlawyers could be trained to "perform virtually all functions in administrative agency proceedings," provided they received targeted instruction in agency rules, procedures, and forms.[332] In sum, across diverse domains, nonlawyers with specialized knowledge and training performed at or above the level of many of their lawyer counterparts.

A second equally important point relates to the context in which nonlawyers are active and, in particular, the importance of simplicity and informality. When federal agencies authorize nonlawyer representation, they tend to authorize that representation in relatively informal proceedings.[333] And, the evidence suggests that this is where nonlawyers tend to thrive. For instance, two of the settings in which Kritzer studied nonlawyers—unemployment compensation and Social Security disability appeals—involved relatively streamlined and routinized procedures.[334] Carpenter, Mark, and Shanahan found that nonlawyers

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[328] *See supra* notes 292–303 and accompanying text.

[329] Sandefur, *supra* note 166, at 305 ("Studies that compare lawyers to nonlawyers highlight the importance of specialized expertise over generalized legal training.").

[330] Duquette & Ramsey, *supra* note 157, at 390.

[331] Kritzer, *supra* note 166, at 101.

[332] Hostetler, *supra* note 93, at 105.

[333] *See supra* notes 123–125. Indeed, certain agency proceedings have been designed specifically to accommodate nonlawyer providers. *See* Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 321 (1985) (emphasizing that "the system for administering [veteran disability] benefits should be managed in a sufficiently informal way that there should be no need for the employment of an attorney").

[334] KRITZER, *supra* note 158, at 26–27, 127.

were particularly helpful when the procedures were relatively straightforward.[335] Here, more research would be useful, but it appears that when processes are simple, nonlawyers are particularly effective. Conversely, where processes are complex and, for example, a jurisdiction's general rules of procedure and evidence are in play, lawyers are much more likely to outperform nonlawyer advocates—and, at the least, nonlawyers need intense, particularized training.[336]

C. "Head-to-Head" Lawyer versus Nonlawyer Matchups Are Reductive and Rigged

A third lesson abstracts out, to address the proper comparison. The evidence we assemble suggests that in a range of domains, trained and licensed nonlawyer advocates perform legal services on par with the services provided by lawyers. That is what Hostetler, Kritzer, Genn and Genn, and Moorhead et al., among others, found. Yet, even while we show that nonlawyers pass this test, we also believe that this test is both rigged and unduly reductive.[337]

The test is rigged because, as we explained at the outset, the reality is that today, *lawyers are the exception, not the rule*. In three-quarters of cases, at least one side is currently muddling through, entirely without help.[338] Thus, the right test is not whether nonlawyers stack up well as against their JD-toting counterparts; it is whether having the assistance of a trained nonlawyer is markedly better than going it alone.[339] And critically, *every study* we identified

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[335] Carpenter et al., *supra* note 160, at 1046.

[336] Sandefur, *supra* note 166, at 306. Recognizing this distinction, in England and Wales, for instance, one must possess a law license to engage in certain "reserved activities." Hadfield, *supra* note 19, at 1278. These primarily involve "appearances in higher courts and the conduct of litigation." *Id.* Recall, too, that in Arizona's survey on LPs, a majority of judge and attorney respondents agreed that hearings with LPs took longer than hearings with attorneys, and further that LPs could benefit from additional training on rules of procedure and evidence. ARIZ. SUP. CT., *supra* note 220, at 14, 19.

[337] The test is rigged in another important way, too. Many studies compare *specialized* nonlawyers to *specialized* lawyers. Yet, given the importance of specialization (discussed above) coupled with the realities of representation, the more appropriate comparison is arguably between *specialized* nonlawyers (e.g., those who, day-in-and-day-out, help folks submit workers' compensation claims or respond to eviction notices) as against *generalist* lawyers (as lawyers, unlike many licensed paraprofessionals, may operate far outside their own areas of expertise). This is significant because there is good reason to think that specially trained nonlawyers, at least sometimes, outperform JD-toting generalists. Such an idea is consistent with common sense. *See, e.g.*, Upsolve, Inc. v. James, 604 F. Supp. 3d 97, 118 n.13 (S.D.N.Y. 2022) (observing that "there is some common-sense truth to the notion that a nonlawyer 'who has handled 50 debt collection matters, for example, would likely provide better representation than a patent lawyer who has never set foot in small claims court and last looked at a consumer contract issue when studying for the bar exam'"), *vacated*, 155 F.4th 133 (2d Cir. 2025); *1948 Hearing*, *supra* note 80, at 66–67 (statement of Herschel A. Hollopeter, Traffic Dir., Ind. State Chamber of Com.) (offering a similar perspective).

[338] *See supra* notes 8–20 and accompanying text.

[339] This is a point the trial court recognized in *Upsolve*, noting that individuals assisted by nonlawyer advocates with "limited legal training" would "logically" be better off than individuals condemned to "complete their own forms pro se, with no legal training at all." 604 F. Supp. 3d at 118

that compares pro se litigants to nonlawyer-represented litigants finds the latter fare better than the former; one is significantly better off hiring a nonlawyer than forging ahead without assistance.[340]

At the same time, there is data showing that when legal assistance is available, individuals with legal problems are more likely to address those legal problems, as opposed to letting those problems fester.[341] And, there is some evidence suggesting that when individuals represent themselves, efficiency—not just accuracy—takes a hit: "Hearings with people who represent them-

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n.13; *accord* Weckstein, *supra* note 40, at 667 ("It may be laudable to require that for one's own benefit, he must seek legal services only from qualified counsel, but it is untenable to insist upon such a requirement when qualified legal counsel is not available.").

[340] *See* Hostetler, *supra* note 93, at 103–04; VA 2024 STUDY, *supra* note 280, at 49; Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 327 (1985); *cf.* GENN & GENN, *supra* note 281, at 107, 243 (documenting that representation, of any kind, significantly increased claimants' odds of success, though not directly comparing the subset of nonlawyer representatives to no representation); Hilary W. Hoynes, Nicole Maestas & Alexander Strand, *Legal Representation in Disability Claims* 4, 11–14, 17–18 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29871, 2022) (analyzing data on 7.4 million social security disability applications from 2010 to 2014 and finding that representation—which, in the sample, was furnished by a mix of lawyers and nonlawyers—increased the probability of an initial award by 23%, from a base rate of about 32% to 55%). *But cf.* Greiner & Pattanayak, *supra* note 167 (concerning an offer of representation).

This baseline determination is consistent with the broader literature, which persuasively shows that *lawyer*-represented individuals fare better than those who go it alone. *See, e.g.*, Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 AM. SOCIO. REV. 909, 915–16, 918, 921 (2015) (drawing on eighteen empirical studies covering more than 18,000 adjudicated cases and concluding that having a lawyer increases the likelihood of a favorable outcome relative to proceeding pro se); David A. Hyman, Mohammad Rahmati, Bernard S. Black & Charles Silver, *Medical Malpractice Litigation and the Market for Plaintiff-Side Representation: Evidence from Illinois*, 13 J. EMPIRICAL LEGAL STUD. 603, 604, 611 (2016) (reporting in the medical-malpractice context that "[h]aving a lawyer has a large impact on both the likelihood of 'winning' (i.e., receiving a positive recovery) and the amount recovered, conditional on success"); Carroll Seron, Martin Frankel & Gregg Van Ryzin, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 419, 425–26 (2001) (concluding, based on a randomized experiment, that "the provision of legal counsel produces large differences in outcomes for low-income tenants in housing court, independent of the merits of the case"); Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 505, 511–12 (2003) (finding that, among a sample of 406 Baltimore women who sought intervention for domestic violence 83% of women who were represented obtained a protective order, compared to 32% of the unrepresented). *But cf.* Leandra Lederman & Warren B. Hrung, *Do Attorneys Do Their Clients Justice? An Empirical Study of Lawyers' Effects on Tax Court Litigation Outcomes*, 41 WAKE FOREST L. REV. 1235, 1239 (2006) (examining the results of Tax Court cases and finding that "attorneys obtain significantly better results in tried cases than unrepresented taxpayers do" although, when cases were settled, the result did not hold).

[341] *See* Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 136–38 (2010) (collecting evidence).

selves, especially in family-law cases, tend to last much longer because of the need for the court to redirect parties or work through difficulties."[342]

Meanwhile, in proceeding on the assumption that, to pass muster, the quality of legal services supplied by nonlawyers must be on par with the quality of legal services supplied by lawyers, the debate is also unduly reductive. The problem is that the debate's myopic focus on "quality" to the exclusion of other values and attributes, distorts the relevant inquiry.

Generally, when a consumer, patient, or client evaluates goods or services, the consumer, patient, or client evaluates the quality of the good or service *alongside other characteristics*. When buying even important things—like cars or infant car seats—or when seeking the services of professionals—including medical providers—we tolerate substantial quality differentiation, even when that means that some options in the marketplace are more dangerous and others are less dangerous.

Consider automobiles. The Mitsubishi Mirage sees 205 deaths per million registered vehicles, while the Mercedes-Benz E-Class sees zero.[343] But, nobody bans the Mitsubishi Mirage and, with its $18,250 price tag, many consumers quite reasonably buy it, compared to the Mercedes, which costs roughly four times as much.[344] Indeed, many consumers probably compare, in their own minds, the Mirage to the bicycle, which is much more dangerous still (and also perfectly legal).[345]

We authorize the sale of the Mirage *and* the bicycle—and we also let patients visit anyone from a nurse practitioner to a podiatrist to a midwife to a

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[342] GEORGIA REPORT, *supra* note 9, at 88; *Closing the Justice Gap Hearings, supra* note 10, at 2 (statement of Hon. Nathan L. Hecht, C.J., Sup. Ct. of Tex.) ("The increase in *pro se* litigation not only produces results without regard to the merits of the claims presented but makes court processes less efficient."); Recommendation No. 86-1, *supra* note 191, at 25642 ("[U]nassisted individuals are more likely than those who are assisted to cause a loss of agency efficiency by requiring more time, effort, and help from the agency."). *But see* JOHN M. GREACEN & PAMELA A. GAGEL, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FAMILY LAW IN FOCUS: A RETROSPECTIVE STUDY OF COLORADO'S EARLY EXPERIMENTS WITH PROACTIVE CASE PROCESSING 17 (2013) (finding that "cases with self-represented litigants resolve more quickly than those with two attorneys").

[343] Sean Tucker, *The Deadliest and Least Deadly Cars*, KELLEY BLUE BOOK (July 18, 2023), https://www.kbb.com/car-news/the-deadliest-and-least-deadly-cars/ [perma.cc/ELK7-GHTX] (reporting on cars with the highest and lowest driver death rates from 2017 through 2021; in addition to the Mercedes, other cars with a zero death rate included the BMW X3, the Lexus ES, and the Nissan Pathfinder).

[344] *Compare* Eric Brandt, *2024 Mitsubishi Mirage Review*, KELLEY BLUE BOOK, https://www.kbb.com/mitsubishi/mirage-g4/ [perma.cc/5XDZ-K29] (Jan. 30, 2025), *with* Colin Ryan, *2025 Mercedes-Benz E-Class Review*, KELLEY BLUE BOOK, https://www.kbb.com/mercedes-benz/e-class/2025/ [perma.cc/P3ZW-77BQ] (Jan. 30, 2025).

[345] *See* Laurie F. Beck, Ann M. Dellinger & Mary E. O'Neil, *Motor Vehicle Crash Injury Rates by Mode of Travel, United States: Using Exposure-Based Methods to Quantify Differences*, 166 AM. J. EPIDEMIOLOGY 212, 213–14 (2007) (reporting that U.S. bicyclists face a fatality rate of 21.0 deaths per 100 million person-trips—where person-trip is defined as "a one-way journey between two points"—while car occupants face a rate of 9.2 per 100 million person-trips).

surgeon—because there is, generally, an understanding that (1) competent adults should be able to choose for themselves among various offerings; and (2) the quality of a good or service is appropriately balanced against other variables, such as cost, comfort, and convenience. There is no reason to depart from those general understandings here.[346]

D. Who Should Bear the Burden of Proof?

Fourth, we have painstakingly compiled and analyzed available evidence concerning the quality of legal services supplied by nonlawyers because various bar leaders have suggested that this is the evidence they want to see. The President of the Florida Bar has declared, for instance, that the rules that govern the legal profession should be changed if and only if reformers can show, with "clear and compelling empirical data" that the reforms they champion would be salutary with "little or no risk to the public."[347] And, the Bar President has staked his opposition to various reforms because of the asserted "absence of such data."[348] In his view, then, reformers bear the burden of proof, and it is an elevated burden (of "clear and compelling" evidence), to boot.

Unanalyzed is a deeper question. Who *ought* to bear the burden of proving what works or does not? Should the burden of proof always and inevitably rest on those who support reform? Or, particularly considering the "rotten roots" of modern UPL restrictions, coupled with the practical difficulty of empirically demonstrating the value of something (lay representation) that is still criminalized in most parts of the country, should the burden perhaps fall on those who support a status quo that is so extravagantly failing to serve so many low- and middle-income Americans?[349]

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[346] Relevant here: In the UK, one study finds that, as compared to solicitors, nonlawyers who write wills tend to be cheaper and more convenient. *See* LEGAL SERVS. CONSUMER PANEL, *supra* note 163, at 3. Indeed, attorneys are not immune to this balancing, and prospective clients frequently choose among various providers. Consider that Neal Katyal of Milbank is an exceptionally good lawyer, and he is expensive; he clocks in at $3,250 per hour. Meanwhile, some "inexperienced" lawyers charge as little as "$300 per hour." Debra Cassens Weiss, *BigLaw Partner Won't Charge His $3,250 Hourly Rate to Defend New Jersey Cities in Trump Administration Suits*, A.B.A. J. (July 31, 2025), https://www.abajournal.com/news/article/biglaw-partner-wont-charge-his-3250-hourly-rate-to-defend-new-jersey-cities-in-trump-administration-suits [perma.cc/APD8-G8FR]; Aaron Hall, *Which Lawyers Have the Highest Rates? How Much Do They Charge?* (July 2, 2025), https://aaronhall.com/which-lawyers-have-the-highest-rates-how-much-do-they-charge/ [perma.cc/PG99-MGME]. We assume that clients seeking legal services can decide for themselves whose services to seek. We do not preclude clients from seeking the services of inexperienced lawyers just because another higher-quality (and more expensive) lawyer might be available.

[347] Tanner Letter, *supra* note 39, at 10.

[348] *Id.*

[349] Engstrom & Stone, *supra* note 18, at 188, 191–98.

E. The Value of Evidence

Fifth and finally, the above exercise, which sifts *through* evidence, points to the value *of* evidence. In particular, we offer a plea that it is high time to move beyond untested assumptions and toward empirically informed decision-making.[350] The legal monopoly was created almost a century ago based on the bare assumption that nonlawyers would harm clients.[351] Throughout the 1940s, 1950s, and 1960s, the bar tried doggedly to fortify that monopoly, claiming that, without reform, nonlawyers would harm clients.[352] Now, some members of the bar oppose efforts to relax the professional monopoly because the relaxation of the monopoly will, they claim, assertedly harm clients.[353]

In all this time, the bar has had plenty of time to show that nonlawyers, in fact, harm clients. It has not.[354] Over this span, judges and policymakers have repeatedly *asked* the bar for evidence that nonlawyer representation harms clients.[355] Again and again, the bar has failed to bring the receipts. The profession may be excused for not having the tools and frameworks for rigorous empirical inquiry at the turn of the twentieth century. But an adherence to unfounded assumptions—that are testable today—is no longer sustainable.[356]

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[350] Chambliss, *supra* note 61, at 299 ("Historically, courts have required little evidence in support of lawyers' monopoly claims."); Green, *supra* note 27, at 1273 (explaining that, when it comes to the "regulation of law practice," courts have tended to "eschew the collection of data and experimentation, relying instead on anecdotes, impressions, received wisdom, and analogies").

[351] *See supra* note 40 (collecting sources).

[352] *See supra* notes 81–85 (collecting sources); *see also, e.g.*, Thomas J. Boodell, *Admission to Practice Before Administrative Agencies*, *in Our Leading Article*, 20 UNAUTHORIZED PRAC. NEWS 3, 11 (June 1954) (statement of F. Trowbridge vom Baur) (advocating the restriction of lay practice before administrative agencies because, inter alia, "[a]ny form of short cutting legal education . . . is not in the public interest").

[353] *See supra* notes 1–7, 33–41.

[354] *See* Christensen, *supra* note 64, at 203 (noting that "there is comparatively little in the history of unauthorized practice, either in the literature or in the cases, by way of hard evidence of substantial actual injury to the public through the activities of unauthorized practitioners"). This absence of evidence did not keep the New York Attorney General from recently doubling down on the specious claim that "no measure short of prohibition would adequately protect [New Yorkers] from the dangers posed by . . . unlicensed and unregulated law practice." Brief for Appellant at 59, 70–71, Upsolve, Inc. v. James, 155 F.4th 133 (2d Cir. Oct. 5, 2022) (No. 22-1345). Many opponents of nonlawyer providers are quick to mention *notarios* in illustrating the dangers of nonlawyer practice. But *notarios* are unlicensed and unregulated, which is the precise opposite of the nonlawyer legal service providers we are discussing and endorsing here. *See supra* note 36.

[355] *See, e.g.*, *1948 Hearing*, *supra* note 80, at 120 (statement of Mathias F. Correa, Couns., N.Y. State Soc'y of Certified Pub. Accts.) (pointing out that, even as the ABA sought to strip nonlawyers of the right to practice before administrative agencies, it failed to marshal even a shred of evidence of harm from existing nonlawyer practice).

[356] This is particularly so given the evidence showing that UPL complaints are typically lodged by aggrieved lawyers, not aggrieved clients. *See* Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2591–93 (2014).

CONCLUSION

Sixty years ago, in the midst of President Johnson's War on Poverty, Attorney General Nicholas Katzenbach gave a speech on access to justice, with a rousing call to action. "There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders," he observed, "[b]ut, without disrespect to this important work, we cannot translate our new concern into successful action simply by providing more of the same."[357] Instead, Katzenbach argued, it was time to expand the frame: "Not every injury requires a surgeon; not every injustice requires an attorney."[358] "We need what is, in effect, a new profession—a profession . . . made up of human beings from all professions, committed to helping others who are in trouble. That job is too big—and, I would add, too important—to be left only to lawyers."[359]

For a very long time, Katzenbach's idea has been shelved, for fear that relaxing UPL restrictions to permit representation by those "unschooled" in the law would backfire. Nonlawyers, many have long insisted, would prey upon the unsuspecting, hurting the very people they were hired to help.

Here, we have tackled that persistent fear head-on. After canvassing available research assessing the quality of legal services furnished by nonlawyers against those furnished by lawyers we find that, just as Attorney General Katzenbach suspected, while lawyers have cornered the market on the provision of legal services, they have no monopoly on legal know-how. The need is too vast to be met by lawyers alone. The consequences of insisting otherwise are measured not in abstractions or hypotheticals, but in evictions, lost benefits, foreclosures, and wage garnishments. It is past time to drop the fiction that only lawyers can help, and to welcome in those who are already proving otherwise.

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[357] Nicholas B. Katzenbach, Acting Att'y Gen., Dep't of Just., Address to the Conference on Extension of Legal Services to the Poor 3 (Nov. 12, 1964).

[358] *Id.* at 5.

[359] *Id.*