SHOULD STATE TRIAL COURTS BECOME LABORATORIES OF UPL REFORM?

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INTRODUCTION

There is a growing "access to justice" movement that is principally driven by lawyers and judges.[1] It has multiple objectives.[2] One such objective is to make state court proceedings fairer, more reliable, and more accessible.[3] This is important because state courts have a significant impact on peoples' lives. They are where family members lose custody of children, where property owners obtain permission to evict tenants, where creditors are empowered to repossess people's cars or garnish their wages, and (in some

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1. *See* Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 1569, 1585–87 (2014); Lauren Sudeall, *Integrating the Access to Justice Movement*, 87 FORDHAM L. REV. ONLINE 172 (2019); David Udell, *Building the Access to Justice Movement*, 87 FORDHAM L. REV. ONLINE 142 (2019).

2. *See generally What Is Access to Justice?*, NAT'L CTR. FOR ACCESS TO JUST., https://ncaj.org/what-access-justice [https://perma.cc/M5BM-WN4T] (Nov. 20, 2023).

3. *See id.* The access to justice crisis goes beyond the problem of unequal resources in civil litigation because people's legal problems often do not become civil cases. *See generally* Rebecca L. Sandefur & James Teufel, *Assessing America's Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 775 (2021).

jurisdictions) where judges send people to jail to compel them to pay judgments or fees that they cannot afford to pay.[4]

Court proceedings' fairness, reliability, and accessibility traditionally depend on lawyers—that is, on both sides appearing in court through relatively evenly matched advocates who present the best facts and legal arguments for their respective clients.[5] However, most low-income individuals who appear in civil cases are unrepresented,[6] and many default rather than defending themselves.[7] Although some individuals might not come to court even if lawyers were available,[8] and many still would not prevail even if they had come to court with a lawyer, legal representation increases the likelihood of success,[9] and it makes the process procedurally

4. On the jailing of people who are unable to pay fines and fees, see generally Lisa Foster, *The Price of Justice: Fines, Fees, and the Criminalization of Poverty in the United States*, 11 U. MIA. RACE & SOC. JUST. L. REV. 1 (2020); Meghan M. O'Neil & J.J. Prescott, *Targeting Poverty in the Courts: Improving the Measurement of Ability to Pay*, 82 LAW & CONTEMP. PROBS. 199 (2019).

5. *Cf.* Penson v. Ohio, 488 U.S. 75, 84 (1988) ("The paramount importance of vigorous representation follows from the nature of our adversarial system of justice. This system is premised on the well-tested principle that truth—as well as fairness—is 'best discovered by powerful statements on both sides of the question.'" (quoting Irving R. Kaufman, *Does the Judge Have a Right to Qualified Counsel?*, 61 AM. BAR ASS'N J. 569 (1975))).

6. With respect to debt cases, see THE PEW CHARITABLE TRS., HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS (2020). With respect to family court cases, see Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 COLUM. L. REV. 1471 (2022).

7. *See* Midland Funding, LLC v. Johnson, 581 U.S. 224, 238 (2017) (Sotomayor, J., dissenting) (noting that in debt collection cases, according to Federal Trade Commission data, "over 90% [of alleged debtors] fail to appear at all," with the result "that debt buyers have won 'billions of dollars in default judgments' simply by filing suit and betting that consumers will lack the resources to respond" (quoting Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259, 263 (2011)); *see also* Dalie Jimenez, *Dirty Debts Sold Cheap*, 52 HARV. J. ON LEGIS. 41, 82 (2015) ("[T]he overwhelming majority of collection cases are won by default—the consumer just never shows up."); *To Reform Debt Collection Litigation, Courts Need Better Data*, PEW, https://www.pewtrusts.org/en/research-and-analysis/articles/2022/10/24/to-reform-debt-collection-litigation-courts-need-better-data [https://perma.cc/N5KN-3TSH] (Nov. 6, 2023) ("[M]ore than 70% of these [debt collection] lawsuits result in default judgments . . . ."); CLARE JOHNSON RABA, U. OF ILL. CHI. SCH. OF L. DEBT COLLECTION LAB, ONE-SIDED LITIGATION: LESSONS FROM CIVIL DOCKET DATA IN CALIFORNIA DEBT COLLECTION LAWSUITS 4 (2023) (noting that in California, debtors participate in only around 9 percent of consumer debt cases).

8. *Cf.* Emily Ryo & Reed Humphrey, *Beyond Legal Deserts: Access to Counsel for Immigrants Facing Removal*, 101 N.C. L. REV. 787, 787–88 (2023) (arguing that even if there were enough lawyers and nonlawyer practitioners—e.g., accredited representatives and legal technicians—immigrants facing removal might not be able to take advantage of their assistance because of language, geographic, and social barriers).

9. *See* Russell Engler, *Connecting Self-Representation to Civil* Gideon*: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010) (describing studies showing that representation leads to better outcomes in eviction cases, family law cases, and administrative law cases); Jessica K. Steinberg, *In Pursuit of Justice?: Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 459–60 n.27 (2011) (citing studies showing that "regardless of the substance of the case, unrepresented litigants face far less favorable outcomes than their represented counterparts"); Nicole Summers, *The Limits of Good Law: A Study of Housing Court*

fairer regardless of the outcome. Although some judges may try to be more solicitous of unrepresented parties, judges' obligation of neutrality limits their solicitude, which does not, and cannot, compensate for parties' lack of legal representation.[10]

Lawyers could be made more widely available to parties who cannot afford to retain them in state court proceedings. Government and philanthropic funding for legal services lawyers might be increased,[11] and lawyers might donate more pro bono service to low-income clients in civil cases.[12] Some reformers have advocated for the idea of "civil *Gideon*"—i.e., that low-income parties should have a legal right to government-funded lawyers in civil cases comparable to the constitutional right to counsel in criminal cases.[13] But at least for the foreseeable future, there will not be enough lawyers to meet ordinary peoples' legal needs in civil litigation—much less in general.[14] Courts and legislatures might also make the civil adjudicative

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Outcomes, 87 U. CHI. L. REV. 145, 214 (2020) (concluding that in housing court proceedings, represented tenants obtain better outcomes than unrepresented tenants).

10. Federal courts take the view that unrepresented parties who are legally inexperienced should receive special solicitude from the court. *See, e.g.*, Tracy v. Freshwater, 623 F.3d 90, 101 (2d Cir. 2010). State courts, however, do not invariably agree. *See, e.g.*, Lowrance v. Indiana, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) ("It is well settled that pro se litigants are held to the same legal standards as licensed attorneys . . . . We will not become an 'advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.'" (quoting Perry v. Anonymous Physician 1, 25 N.E.3d 103, 105 n.1 (Ind. Ct. App. 2014)). Further, a recent study casts doubt on whether state judges show unrepresented parties particular solicitude. *See* Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. 509, 516 (2022) (finding that in protection cases, in which parties were unrepresented, "[j]udges maintained legal and procedural complexity in their courtrooms by offering only the most limited explanations of court procedures and legal terms and refusing to answer litigants' questions," and "limit[ed] the evidence they were willing to hear from either party, particularly from defendants").

11. *See, e.g.*, Benjamin C. Carpenter, *A Solution Hidden in Plain Sight: Closing the Justice Gap by Applying to Legal Aid the Market Incentives That Propelled the Pro Bono Revolution*, 25 CHAP. L. REV. 1 (2021) (advocating that private law firms increase their contributions to legal aid organizations); Louis S. Rulli, *On the Road to Civil* Gideon*: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J.L. & POL'Y 683 (2011) (describing, and discussing the implications of, federal legislation providing for counsel to indigent homeowners whose residences were subject to civil forfeiture).

12. *See, e.g.*, Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357 (2010) (advocating for making law firms' pro bono work more effective); Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415 (1999) (advocating for increased pro bono work by law students).

13. *See, e.g.*, Martha F. Davis, *Participation, Equality, and the Civil Right to Counsel: Lessons from Domestic and International Law*, 122 YALE L.J. 2260 (2013); Stan Keillor, James H. Cohen & Mercy Changwesha, *The Inevitable, if Untrumpeted, March Toward "Civil* Gideon,*"* 64 SYRACUSE L. REV. 469 (2014).

14. That is, lawyers are generally unavailable to low-income persons with respect to legal problems that are not, and may never become, the subject of civil litigation—for example, to advise or assist an employee seeking overtime pay or a tenant seeking the return of a security deposit. *See* Keillor et al., *supra* note 13, at 471–72.

processes more easily navigable by unrepresented parties on their own,[15] perhaps with the benefit of computer technologies.[16] But there will always be people who need other peoples' help.[17]

Perhaps paradoxically, parties have wider access to other peoples' help in nonjudicial adjudicative processes in which, by design, the process is simpler. For example, in arbitration and administrative hearings, the procedures are generally more easily navigable by ordinary individuals. And yet, parties who nevertheless feel unable to advocate wholly on their own, but who cannot afford a lawyer, are permitted to seek the help of nonlawyers (for want of a better term).[18] In most arbitration proceedings and many administrative proceedings, parties may look to nonlawyers for advice, drafting assistance, or advocacy.[19] In some administrative adjudications, parties may retain nonlawyers who have relevant training and experience,[20] whereas in others, parties may seek legal assistance from almost anyone.[21]

In contrast, in state civil court proceedings—in which the processes are most daunting, and parties are therefore most likely to need others' help—parties have the most limited access to nonlawyers' assistance because of the

15. *See* D. James Greiner, Dalie Jimenez & Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J 1119 (2017). For example, small claims courts are designed to make it easier for parties to represent themselves. *See generally* Victoria J. Haneman, *Bridging the Justice Gap with a (Purposeful) Restructuring of Small Claims Courts*, 39 W. NEW ENG. L. REV. 457 (2017).

16. *See* Drew Simshaw, *Toward National Regulation of Legal Technology: A Path Forward for Access to Justice*, 92 FORDHAM L. REV. 1 (2023).

17. *See* Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1260 (2023) (noting that although "the New York court system has approved a check-the-box answer form for use in debt collection cases . . . [b]arriers of language and reading comprehension may impede people's ability to complete forms themselves" and "these forms are not self-explanatory").

18. Within the community of lawyers and scholars who write about access to justice, a search has been underway for the ideal term to describe people who comprise the overwhelming majority of the population who are not licensed to practice law. For want of a word that is commonly accepted as preferable, this Essay employs "nonlawyers." Other terms–such as "paralegals," "allied legal professionals," "frontline advocates," and "justice workers" have been employed to describe certain categories of nonlawyers, and particularly those who have training or informal experience in aspects of legal practice.

19. As to arbitrations, see Sarah Rudolph Cole, *Blurred Lines: Are Non-attorneys Who Represent Parties in Arbitrations Involving Statutory Claims Practicing Law?*, 48 U.C. DAVIS L. REV. 921 (2015); Perry A. Zirkel, *Non-attorney Representatives in Labor Arbitration: Unauthorized Practice of Law?*, DISP. RESOL. J., Jan. 2016, at 1 ("It is not uncommon for one or both parties at labor arbitration, more often the union but sometimes the employer, to have a representative who is not a lawyer. For the union, it may well be a full-time staff member with various duties in support of several locals. For the company, it may be a member of the human resources staff."). As to administrative proceedings, see *supra* notes 15–16; *infra* notes 56, 59 and accompanying text.

20. *See* Green, *supra* note 17, at 1267 (noting certified nonlawyers' role in federal immigration and patent proceedings).

21. *See* Derek Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581 (1999); Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Provisions*, 34 STAN. L. REV. 1, 77–80 (1981); *infra* note 50 and accompanying text.

laws forbidding the unauthorized practice of law (UPL).[22] As the name suggests, these laws forbid people other than lawyers from practicing law without authorization. Although the "practice of law" does not have clear boundaries, these laws generally forbid nonlawyers from advocating for others in court, from producing judicial documents such as complaints and answers for others, and from giving legal advice to others about how to handle their civil litigation matters.[23] Although the UPL laws were motivated by lawyers' economic self-interest,[24] they have a similar justification to laws allowing only doctors to perform surgery: the UPL laws ostensibly protect parties from people who are not competent to provide legal assistance, which demands specialized knowledge and training.[25] In the context of adjudication, some would also say that the UPL laws protect the integrity of the proceedings.[26]

Recent lawsuits in New York, North Carolina and South Carolina have asserted that these states' UPL laws are unnecessarily broad and encroach on parties' First Amendment rights.[27] In the New York challenge, for example, a not-for-profit organization, assisted by lawyers, offered to train nonlawyers to help defendants in debt-collection cases fill out court-authorized answer forms.[28] The state attorney general contended that even this limited assistance would violate the UPL law, presumably because nonlawyer professionals trained by lawyers to perform this specific task cannot be

22. *See generally* Green, *supra* note 17; Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1232–38 (2014).

23. *See* N.Y. JUD. LAW § 478 (McKinney 2024). For a thoughtful defense of UPL laws notwithstanding the limited availability of lawyers for low-income clients, see 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 (2014).

24. On the early origin of UPL laws, see 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 (2000); Bruce A. Green, *Civil Justice at the Crossroads: Should Courts Authorize Nonlawyers to Practice Law?*, 75 STAN. L. REV. ONLINE 104 (2023) [hereinafter Green, *Civil Justice at the Crossroads*]; Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97 (2018).

25. *See* Green, *supra* note 17, at 1256–57.

26. *See* Cynthia L. Fountaine, *When Is a Computer a Lawyer?: Interactive Legal Software, Unauthorized Practice of Law, and the First Amendment*, 71 U. CIN. L. REV. 147, 172 (2002) (arguing that the fear "that non-lawyers will, due to their incompetence and lack of integrity, inflict harm on the courts and other legal institutions . . . is unfounded, however, and is certainly no larger a threat than that posed by permitting litigants to represent themselves in legal proceedings, a practice that has long been protected—even lauded—in the American legal system").

27. *See In re* S.C. NAACP Hous. Advoc. Program v. Wilson, No. 2023-001608, 2024 S.C. LEXIS 21 (S.C. Feb. 8, 2024); Upsolve, Inc. v. James, 604 F. Supp. 3d 97 (S.D.N.Y. 2022) (challenge to New York's UPL law); S.C. State Conf. of the NAACP v. Wilson, No. 23-CV-01121, 2023 U.S. Dist. LEXIS 142372 (D.S.C. Aug. 14, 2023) (challenge to South Carolina's UPL law); Complaint, Black Polaski v. Stein, No. 24-CV-00004 (E.D.N.C. Jan. 4, 2024), ECF No. 1. For an analysis of the First Amendment implications of UPL laws, see Michele Cotton, *Improving Access to Justice by Enforcing the Free Speech Clause*, 83 BROOK. L. REV. 111 (2017).

28. *Upsolve, Inc.*, 604 F. Supp. 3d at 103.

trusted to do so competently, and so alleged debtors who cannot afford lawyers are better off fending for themselves.[29]

This assumption is highly questionable. Although represented parties in civil disputes often get better outcomes than unrepresented parties,[30] it is unlikely that in every civil litigation context, lawyers are the only ones who can provide useful legal assistance. Professor Rebecca Sandefur and others point to empirical evidence that nonlawyers can competently perform many discrete legal tasks that constitute the "practice of law."[31] Not all legal practice is equivalent to surgery.[32] Moreover, even assuming that nonlawyers were less skilled, unrepresented parties might often be better off with a nonlawyer's legal help than with nobody's help, which is their only alternative.

Some members of the access-to-justice movement would enable nonlawyers to help people with legal problems in situations in which nonlawyers would generally be helpful, not harmful.[33] This Essay examines the legal processes by which this might be achieved, focusing on one that is unexplored. Part I describes seven procedural routes that are currently available to expand nonlawyers' role in providing legal assistance to others. Part II proposes that state supreme courts create a new route by authorizing trial judges, in civil cases over which they preside, to allow nonlawyers to provide free legal assistance to unrepresented parties. Their assistance would be circumscribed by the trial court and subject to the trial court's oversight and evaluation. Finally, Part III responds to some foreseeable objections to expanding nonlawyers' role by the route proposed in Part II.

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29. *See* Green, *supra* note 17, at 1258–64 (discussing the *Upsolve* litigation).

30. *See* Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter?: The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 942 (2016) ("[W]hile there may be areas where legal representation is likely to have less of an impact on case outcomes, the bulk of the evidence indicates that lawyers matter."); *see also supra* note 9 and accompanying text.

31. *See, e.g.*, HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK 43 (1998); Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. C.R. & C.L. 283 (2020); David C. Vladeck, *Hard Choices: Thoughts for New Lawyers*, 10 KAN. J.L. & PUB. POL'Y 351, 356 (arguing that "concerns about the quality of law assistance cannot" justify restrictions on nonlawyer practice "because study after study has shown that trained lay advocates can effectively represent people in standardized legal proceedings—and even in complex ones when they are specially trained").

32. *See* Green, *supra* note 17, at 1270 ("[H]elping people fill out do-it-yourself divorce forms may require above-average legal knowledge without necessarily requiring a law license—or any license or certification at all.").

33. *See, e.g.*, Deborah J. Cantrell, *The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers*, 73 FORDHAM L. REV. 883, 902 (2004) (asserting that legal aid lawyers should make a "concerted effort . . . to convince state legislatures that nonlawyers should be permitted to provide legal services"); Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession of the Public?: Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2607 (2014) ("[A]ccess to qualified licensed providers . . . would surely be preferable to the current system, where, in contexts such as domestic relations or family law, the majority of cases involve at least one party who lacks representation by a trained professional.").

I. SEVEN EXISTING ROUTES TO UPL REFORM

There are currently seven routes by which to expand nonlawyers' role in assisting unrepresented people with their legal problems: (1) state supreme courts and UPL committees authorized by them to interpret the UPL laws can issue opinions that interpret UPL laws more permissively; (2) Congress and federal agencies can adopt federal statutes and federal administrative regulations authorizing certain nonlawyer practice in federal proceedings; (3) state legislatures in some states can adopt state statutes authorizing nonlawyer practice; (4) state agencies can adopt state administrative regulations authorizing nonlawyer practice in certain state proceedings; (5) state supreme courts can, as an exercise of their institutional role, authorize nonlawyers to provide legal assistance to others; (6) pursuant to authority delegated by the state supreme court, an administrative agency or other public body can permit nonlawyers to provide certain legal assistance; and (7) state courts and state regulators with authority to enforce UPL laws can overlook or even tacitly allow conduct that UPL laws proscribe. However, none of these is an ideal route for developing new roles for nonlawyers in state-court civil litigation, and therefore Part II of this Essay proposes an alternative route. The Appendix of this Essay includes a chart listing all seven of the existing routes along with the new one proposed.[34]

First, state supreme courts and others with authority to interpret UPL laws might issue opinions interpreting UPL laws permissively, thereby expanding the types of legal assistance that are *not* the "practice of law" for purposes of UPL laws. State supreme courts and their UPL committees have issued many opinions interpreting UPL laws to permit or forbid various work by nonlawyers.[35] State supreme courts have considerable leeway to interpret UPL laws in a matter consistent with their view of sound public policy and good sense.[36] If state supreme courts were persuaded that nonlawyers' assistance would benefit others, not endanger them, they could interpret the "practice of law" creatively, to exempt the particular services.

In civil litigation, among the most significant roles for nonlawyers whose assistance is regarded as *not* the practice of law is the role of nonlawyer volunteers who serve as Court Appointed Special Advocates (CASAs) on behalf of children in abuse and neglect cases or other family law proceedings.[37] CASAs do many things that lawyers would otherwise do, such as factual investigation, connecting children and parents to community

34. *See infra* Appendix.

35. *See* N.J. Comm. on the Unauthorized Prac. of L., Op. 57 (2021); Va. Comm. on the Unauthorized Prac. of L., Op. 207 (2014).

36. *See* Green, *Civil Justice at the Crossroads*, *supra* note 24, at 108 ("[T]he court had considerable leeway [to interpret the UPL law], both because the statute was susceptible to alternative interpretations and because it addressed the practice of law, a subject on which a court might regard itself as having particular expertise and, perhaps, some latitude to disregard ill-expressed legislative intent.").

37. *See* Michael S. Piraino, *Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*, 1 J. CTR. CHILD. & CTS. 63 (1999).

services, and brokering agreements among disagreeing parties—and arguably do it better.[38] None of this is thought to be the practice of law, largely because of the legal understanding that these trained volunteers, like guardians ad litem, are serving as arms of the court, not as advocates for the child. In truth, however, a CASA's work has much in common with that of a child's lawyer. A CASA's factual investigation and presentation of facts presupposes legal knowledge regarding what does and does not matter to the court's decisions, and CASAs presumably engage in a form of advocacy: they present the facts in light of their views of the child's best interests with respect to the controlling law, not agnostically.

State supreme courts and their UPL committees have interpreted the practice of law to exempt a range of other activities. Currently, these authorities say that providing "legal information," as distinguished from "legal advice," is not the practice of law[39]—a distinction that, as Professor Lauren Sudeall has shown, is far from clear.[40] Nonlawyer "navigators" and other nonlawyers based in courthouses (though outside the courtroom), as well as community navigators,[41] provide some help to unrepresented parties by ostensibly staying on the right side of the information-advice divide.[42] Likewise, paralegals expand the availability of legal assistance because courts exempt paralegals' preliminary work, such as the preparation of an initial draft of a legal document, if a lawyer takes responsibility for the final work product.[43] Further, some courts interpret the practice of law to exclude

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38. *See id.*

39. *See, e.g.*, Disciplinary Couns. v. Deters, 180 N.E.3d 1086, 1091, 1095 (Ohio 2021); *see also In re* Hill, 450 B.R. 885, 887–88 n.3 (B.A.P. 9th Cir. 2011); Sandefur, *supra* note 31, at 286–89.

40. *See generally* Lauren Sudeall, *The Overreach of Limits on "Legal Advice"*, 131 YALE L.J.F. 637 (2022). *See* Soha F. Turfler, Note, *A Model Definition of the Practice of Law: If Not Now, When?: An Alternative Approach to Defining the Practice of Law*, 61 WASH. & LEE L. REV. 1903, 1937 (2004).

41. *See, e.g.*, MARGARET HAGEN, KATE CROWLEY RICHARDSON & SACHA STEINBERGER, LEGALLINK, COMMUNITY NAVIGATORS: THE ROLE OF COMMUNITY NAVIGATORS TO REDUCE POVERTY AND EXPAND ACCESS TO JUSTICE (2022), https://legallink.org/wp-content/uploads/2022/04/Community-Navigators-Legal-Link-Working-Paper.pdf [https://perma.cc/JWQ2-UXLR].

42. For a review of navigator programs, see MARY E. MCCLYMONT, THE JUST. LAB AT GEORGETOWN L. CTR., NONLAWYER NAVIGATORS IN STATE COURT: AN EMERGING CONSENSUS (2019). This report underscores that navigators are limited to providing information, not advice:

> Informants emphasized a deep respect for the importance of ensuring that nonlawyer navigators understand and abide by the critical distinction between legal information and legal advice. By all reports, program leaders exercise an abundance of caution and show deference to this difference. Accordingly, the admonition against giving legal advice is firmly embedded in all program materials.

Id. at 17. Navigator programs differ from those in which lawyers provide limited legal assistance (e.g., brief advice or drafting assistance) to parties who are otherwise representing themselves. *See, e.g.*, *Family Legal Care*, LAW HELP NY, https://www.lawhelpny.org/organization/family-legal-care [https://perma.cc/G8SE-RGAS]. In both cases, however, unrepresented parties receive limited help. *See id.*; *see also* MCCLYMONT, *supra* note 42, at 9.

43. *See* Richard Zorza & David Udell, *New Roles for Non-lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259, 1271–74 (2014).

the provision of certain legal advice or the preparation of certain legal documents when that work accompanies nonlegal work outside court proceedings that a professional, such as an architect, is authorized to perform.[44]

Courts could similarly define simple but non-incidental tasks, such as helping parties fill in form complaints or answers (typically documents that are designed for use by lay litigants), as *not* the practice of law, on the theory that the work does not require a lawyer's specialized skill and knowledge. But many state courts bar nonlawyers from providing even modest assistance with self-help forms (beyond taking dictation).[45] In general, regulators discourage innovation through broad readings of the UPL law.[46]

Second, federal legislation or federal administrative regulations may authorize nonlawyers to practice law in federal adjudicative proceedings. Federal law authorizing nonlawyers to provide legal assistance in federal administrative settings preempts state UPL laws to the extent that these laws might otherwise restrict nonlawyers' work.[47] This is why certified public accountants can advise on federal tax law,[48] why accredited nonlawyers can represent parties in patent and immigration cases,[49] and why nonlawyers

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44. *See* Fountaine, *supra* note 26, at 155.

45. *See, e.g.*, *In re* Campanella, 207 B.R. 435, 448 (Bankr. E.D. Pa. 1997) ("The majority of courts of other jurisdictions have held that the mere sale of forms with instructions does not constitute the unauthorized practice of law. However, these decisions have also consistently opined that, when the non-attorney also gives consultation and/or advice to the client regarding the legal process, where to file forms, or how to fill out the forms, this does constitute the unauthorized practice of law." (citations omitted)); *see also* Green, *supra* note 17, at 1253–58 (discussing Fla. Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978)).

46. *See* Michele Cotton, *Experiment, Interrupted: Unauthorized Practice of Law Versus Access to Justice*, 5 DEPAUL J. FOR SOC. JUST. 179 (2012). Professor Cotton describes a proposal for master's students at the University of Baltimore to provide free assistance to low-income individuals with "'low-stakes' legal problems" who would be referred by a local legal aid office when it could not handle the matter but believed that nonlawyers could help. *See id.* at 191. For example, students might assist a tenant in using the small claims court process to seek the return of a security deposit or assist a former employee who was denied unemployment insurance benefits in an administrative hearing. *See id.* at 192–93, 208. The assistance was to be limited—it could include filling out forms but not drafting legal documents, and it could include gathering facts and organizing evidence but not advocacy. *See id.* at 193. The students would be trained and supervised by lawyers even though arguably the students would not be practicing law within the meaning of Maryland's UPL law. *See id.* at 183. But the project never got off the ground because law school clinicians objected, and Maryland's Attorney General concluded that the students would be engaged in UPL. *See id.* at 205.

47. *See* Sperry v. Florida *ex rel.* Fla. Bar, 373 U.S. 379, 385 (1963).

48. 5 U.S.C. § 500(c) (authorizing Certified Public Accountants to represent clients before the Internal Revenue Service). Certified Public Accountants' authority to provide tax assistance may be limited by state UPL laws in other respects, however. *See generally* Matthew A. Melone, *Income Tax Practice and Certified Public Accountants: The Case for a Status Based Exemption from Unauthorized Practice of Law Rules*, 11 AKRON TAX J. 47 (1995); Adam J. Smith, *Unauthorized Practice of Law and CPAs: A Law of the Lawyers, by the Lawyers, for the Lawyers*, 23 U. FLA. J.L. & PUB. POL'Y 373 (2012).

49. *See generally* Donald J. Quigg, *Nonlawyer Practice Before the Patent and Trademark Office*, 37 ADMIN. L. REV. 409 (1985); Beenish Riaz, *Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System*, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 83–84 (2021). *See* 8 C.F.R. § 292.9 (2024).

without accreditation can assist parties in federal benefits cases.[50] It is doubtful, however, that federal laws could allow nonlawyers to appear in state court proceedings,[51] and, in any event, Congress has not passed laws purporting to give such permission.[52]

Third, legislatures in some states have authority to regulate law practice by authorizing classes of people other than lawyers to undertake work that might fall within the definition of law practice.[53] For example, some state statutes authorize other professionals, such as certified public accountants, to provide discrete services that might otherwise be considered unauthorized practice of law.[54] State statutes also permit nonlawyers to appear in certain advocacy settings, such as administrative hearings,[55] or permit particular nonlawyers to advocate for certain clients. For example, in some states, employees may advocate on their employers' behalf in particular matters.[56] Proposals have been made for legislation to carve out areas of legal assistance that trained and certified paralegals may offer independently, such as assistance in connection with uncomplicated judicial proceedings.[57] However, in states in which statutes could expand opportunities for nonlawyers to assist parties in civil proceedings, legislatures probably have little political motivation to do so unless the nonlawyers in question are well-capitalized software companies seeking to expand online legal services.[58]

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50. *See* Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241, 2273 (1999). Nonlawyers' assistance regarding federal benefits is not unrestricted, however. Absent a preemptive federal regulation, state courts can proscribe federal benefits-related assistance as UPL. *See, e.g.*, Fla. Bar re Advisory Op.—Medicaid Plan. Activities by Nonlawyers, 183 So. 3d 276 (Fla. 2015).

51. *See* Simshaw, *supra* note 16, at 33.

52. *See id.* at 31.

53. In some states, courts hold that separation-of-powers provisions restrict the legislature's ability to regulate who may advocate in state court proceedings, relegating that authority exclusively to the state judiciary. *See, e.g.*, Merco Constr. Eng'rs, Inc. v. Mun. Ct., 581 P.2d 636, 637 (Cal. 1968) (striking down state law allowing corporations to appear in municipal court through nonlawyer corporate officers).

54. *See, e.g.*, N.Y. EDUC. LAW § 7401 (McKinney 2024).

55. *See, e.g.*, Harkness v. Unemployment Comp. Bd. of Rev., 920 A.2d 162, 169 (Pa. 2007) (holding that a Pennsylvania statute permits nonlawyers to represent claimants and employers before a referee in unemployment compensation hearings).

56. *See, e.g.*, Lexington Pub. Schs. v. K.S., 183 N.E.3d 372 (Mass. 2022) (citing statutory authority permitting a school employee to file a petition on behalf of the school district asserting that a child requires assistance as a habitual truant).

57. For example, in Connecticut, a legislative committee proposed a pilot program for accredited nonlawyer representatives to represent parties in consumer debt and eviction cases, but the state legislature has not pursued the proposal to date. *See* JUD. COMM. CONN. GEN. ASSEMBLY, REPORT OF THE TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS 24 (2016) ("Unpaid rent collection, tenants' security deposit claims, and other small claims related to the landlord-tenant relationship frequently arise in small claims court. The issues of fact and law are relatively simple, the amounts in question are small, and persons could benefit from non-lawyer assistance. Consumer debt collection practices involve similar imbalances in power due to the lack of legal representation.").

58. For example, after a UPL action was brought against Parsons Technology, Inc., the producer of Quicken Family Lawyer software, "the Texas legislature stepped in and passed legislation amending Texas's UPL statute, essentially excluding Parsons's products from

Fourth, state administrative agencies also have some lawmaking authority. Like federal administrative agencies, they can adopt regulations regarding their own proceedings.[59] Some have adopted regulations allowing nonlawyers to assist parties in proceedings involving their own state agency.[60]

Fifth, and most promisingly, state supreme courts can allow nonlawyers to assume greater responsibility for rendering legal assistance to others. This is the most traveled route to UPL reform, since, for the most part, authorizing nonlawyers to practice law is a power delegated to, and exercised by, state high courts.[61] Yet, this route is still not well trod.

State supreme courts have been generous in exercising this authority in one respect: they have commonly authorized law students in law school clinical settings and sometimes in other settings to provide legal services

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charges of UPL." Raymond H. Brescia, Walter McCarthy, Ashley McDonald, Kellan Potts & Cassandra Rivais, *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 582 (2015).

59. *In re* Unauthorized Prac. of L. Rules Proposed by S.C. Bar, 422 S.E.2d 123, 124 (S.C. 1992) ("State agencies may, by regulation, authorize persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants (CPAs), attorneys licensed in other jurisdictions and persons possessing Limited Certificates of Admission, to appear and represent clients before the agency.").

60. *See generally* Gregory T. Stevens, Note, *The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach*, 43 VAND. L. REV. 245 (1990).

61. To date, most or all provisions for licensed or supervised paralegals to provide specified legal services have been adopted by state courts pursuant to court rules or orders. *See* TEX. ACCESS TO JUST. COMM'N, REPORT AND RECOMMENDATIONS OF THE TEXAS ACCESS TO LEGAL SERVICES WORKING GROUP 10–14 (2023). Judicial decisions also authorize some nonlawyer practice without reference to explicit statutory authorization. *See, e.g.*, Burlington Police Dep't v. Hagopian, 184 N.E.3d 789, 793 (Mass. App. Ct. 2022) (holding that police may prosecute certain low-level cases). The source of courts' authority to forbid or authorize nonlawyer practice is not entirely clear and likely varies from state to state. In general, state high courts have authority to regulate the practice of law by admitting lawyers to practice, establishing rules of professional conduct, and disciplining lawyers (including by disbarring them for professional misconduct). RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 1, cmt. b (AM. L. INST. 2023). However, the sources and scope of high courts' authority differs. *See id.* cmt. c. In most states, the authority is explicit or deemed to be implicit in the state constitution, whereas in others it is delegated (or confirmed) by legislation. *See id.* In some states, courts share authority with the state legislature, but in others, courts have exclusive authority to regulate lawyers and the practice of law. *See id.*; *supra* note 53. State courts appear to assume that their authority to regulate the practice of law includes the authority to authorize nonlawyers (e.g., licensed paralegals) to engage in the practice of law to a limited extent. *See infra* note 70. It is not certain in all instances, however, whether courts allowing nonlawyer practice are exercising constitutional authority to regulate the practice of law or are exercising authority delegated by the state legislature. In Texas, for example, the court adopted a provision of their rules of civil procedure authorizing limited nonlawyer services. TEX. R. CIV. P. 500.4(a)(2) (allowing nonlawyers to represent parties in eviction cases in Texas Justice Court). In general, the Supreme Court of Texas's authority to adopt civil procedure rules is pursuant to legislative authorization. *See* TEX. GOV'T CODE ANN. § 22.004(b) (West 2023). In some states, such as California and New York, the UPL law is a state statute. *See* CAL. BUS. & PROF. CODE § 6125 (West 2024); N.Y. JUD. LAW §§ 476-a, 478, 484, 485 (McKinney 2024). This may reflect state legislatures' assumption that they have, at the very least, shared authority to determine whether and to what extent nonlawyers may practice law.

under a lawyer's supervision, including in-court advocacy.[62] Otherwise, state judiciaries have sparingly used their authority to expand nonlawyers' role, resisting calls to do so even as pilot projects.[63]

State supreme courts have several ways to authorize nonlawyer practice. They can issue orders or opinions authorizing certain nonlawyers to perform specified legal work. For example, New Jersey's Committee on UPL authorized nonlawyers with experience in special education proceedings, typically obtained in their own children's cases, to assist others in special education proceedings for no fee.[64] State courts have acknowledged and at least tacitly approved the work of jailhouse lawyers,[65] who assist inmates who ordinarily lack meaningful access to lawyers.[66] Recently, acknowledging state supreme courts' authority, a federal court presiding over a constitutional challenge to South Carolina's UPL law encouraged the plaintiffs to seek a ruling from that state's high court authorizing nonlawyers to provide the proposed services.[67] Thereafter, the Supreme Court of South Carolina issued an order authorizing one of the plaintiffs to launch its proposed Housing Program on a three-year provisional basis.[68] Nonlawyer advocates in the program will be trained to provide free, limited assistance to tenants facing eviction, subject to the magistrate courts' approval.[69]

State supreme courts can also adopt court rules permitting nonlawyers to provide particular services that UPL laws might otherwise forbid.[70] This is

62. *See generally* Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 825–28 (2004) (discussing court rules permitting students to practice in law school clinics under faculty supervision).

63. *See, e.g.*, N.Y.C. BAR COMM'N. ON PROF'L RESP., NARROWING THE "JUSTICE GAP": ROLES FOR NONLAWYER PRACTITIONERS (2013); *Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons*, 67 FORDHAM L. REV. 1751, 1759–74 (1999).

64. *See* N.J. Comm. on the Unauthorized Prac. of L., Op. 57 (2021).

65. *See, e.g.*, Disciplinary Couns. v. Cotton, 873 N.E.2d 1240, 1244 (Ohio 2007).

66. *See* Jhody Polk & Tyler Walton, *Legal Empowerment Is Abolition*, 98 N.Y.U. L. REV. ONLINE 282, 311 (2023) ("Jailhouse lawyers are community paralegals: They are members of communities impacted by incarceration who have expertise in the law and serve as a bridge between the legal system and the community of people in prison who are heavily impacted by the law.").

67. S.C. State Conf. of the NAACP v. Wilson, No. 23-CV-01121, 2023 U.S. Dist. LEXIS 142372, at *27 (D.S.C. Aug. 14, 2023).

68. *In re* S.C. NAACP Hous. Advoc. Program v. Wilson, No. 2023-001608, 2024 S.C. LEXIS 21 (S.C. Feb. 8, 2024). The nonlawyer advocates will not advocate for tenants in court or negotiate with landlords on their behalf. *Id.* at *15. They will only advise the tenant to request a hearing and explain when and how to do so. *Id.* at *4. They may also provide "narrow additional advice about the hearing by flagging common defenses, primarily pertaining to notice, that the tenant might be able to raise." *Id.* at *5. When more complicated issues are encountered, the advocates will be instructed to refer the tenant to a legal services provider. *Id.* at *5–6. The program will keep records and submit annual reports that will help the court to decide whether to continue or end the experiment. *Id.* at *7.

69. *Id.* at *1.

70. *See, e.g.*, ARIZ. CODE JUD. ADMIN. § 7-210 (2023) (allowing licensed paralegals to perform specified tasks in certain contexts, including limited jurisdiction civil and criminal cases); ALASKA BAR R. 43.5 (2024) (allowing attorney-supervised paralegals to provide specified services in debt collection defense, seeking domestic violence protective orders, and other specified contexts); DEL. SUP. CT. R. 57.1 (2023) (allowing attorney-supervised

typically done, if at all, only after a long period of study, often in the face of substantial opposition from segments of the bar, and on a provisional basis. For example, a handful of state judiciaries have adopted court rules allowing certified, regulated paralegals to render discrete types of legal work for clients.[71] A notable example was the Washington Supreme Court's experiment with the training and certification of Limited License Legal Technicians (LLLTs) to represent parties in certain divorce, custody, and other family court proceedings.[72] The 2012 pilot project drew considerable attention for being pathbreaking, but few people applied to become LLLTs, in part because of the significant barriers to entry; eventually, in response to political opposition, the court ended the certification of LLLTs while allowing those certified to continue practicing.[73] A recent report identifies sixteen states in which rules have been adopted or proposed to allow certified nonlawyers, whom the report calls "allied legal providers," to provide particular legal services such as the preparation and review of certain legal documents or the representation of parties in mediations, settlement conferences, and depositions.[74]

Sixth, state supreme courts can delegate their law-making authority to other public bodies, and therefore can authorize another body, such as a judicial administrative body or a committee of lawyers, to loosen UPL restrictions by authorizing nonlawyers to render limited legal services. Recently, Utah's high court pursued this path, becoming the first state supreme court to establish an administrative mechanism, referred to as a "regulatory sandbox," with authority to authorize new and otherwise proscribed methods of structuring the provision of legal services in the state.[75] For the most part, the regulatory authority expects, and receives, proposals for profit-driven ventures, such as for nonlawyer ownership of law firms, and many proposals involve expanded use of legal technology.[76] The new regulator has authority to approve the provision of legal services by independent nonlawyers, but a proposal to train unsupervised paralegals to provide even modest legal assistance would be considered "high risk," and only a handful of such proposals have been approved.[77]

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paralegals to represent tenants in landlord-tenant cases); SUP. CT. OF THE STATE OF OR., RULES FOR LICENSING PARALEGALS (2023) (allowing licensed paraprofessionals to provide advice and assistance, but not advocacy, in family law and landlord-tenant cases); UTAH CODE JUD. ADMIN. R. 14-802 (2023) (allowing licensed paraprofessional to provide specified assistance in family law, debt collection, and landlord-tenant matters).

71. *See* Green, *supra* note 17, at 1267–68.

72. *See* Rebecca M. Donaldson, *Law by Non-lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE U. L. REV. 1 (2018).

73. *See id.*

74. *See generally* MICHAEL HOULBERG & NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., ALLIED LEGAL PROFESSIONALS: A NATIONAL FRAMEWORK FOR PROGRAM GROWTH (2023).

75. *See* Green, *supra* note 17, at 1269.

76. *See, e.g.*, UTAH OFF. OF LEGAL SERVS. INNOVATION, INNOVATION OFFICE ACTIVITY REPORT (2023).

77. *See* Logan Cornett & Zachariah DeMeola, *Data from Utah's Sandbox Shows Extraordinary Promise, Refutes Fears of Harm*, IAALS (Sept. 15, 2021),

Seventh, institutions with authority to enforce UPL laws, including state courts at all levels and UPL regulators, might ignore or even tacitly condone conduct that, although forbidden by the law, is helpful to unrepresented parties. The institutions charged with enforcing UPL laws vary from state to state,[78] but in general, these regulatory institutions, like criminal prosecutors, have discretion regarding when to initiate and pursue proceedings.[79] Courts generally do not permit nonlawyers to practice law in their courtrooms, but in all likelihood, the UPL laws are enforced only a fraction of the time that nonlawyers engage in out-of-court conduct that would constitute UPL.

Much work that might constitute UPL evades enforcement because it is never called to courts' or regulators' attention. When friends and family help parties prepare legal documents, such as answer forms in civil litigation, courts either do not know or do not care. Likewise, nonlawyers in community centers generally fly under the radar when they give advice to workers about how to seek unpaid wages and ghostwrite letters to the workers' employees.[80] Over time, if nonlawyers' work becomes relatively commonplace and well known, courts' and regulators' indifference may come to reflect, or be understood as, informal approval.[81] However, the risk of regulatory sanctions under prohibitions that remain on the books might discourage some individuals and organizations from providing this simple assistance or from publicizing its availability. For this reason, ignoring UPL violations is not an effective way of expanding nonlawyers' roles.

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https://iaals.du.edu/blog/data-utahs-sandbox-shows-extraordinary-promise-refutes-fears-harm [https://perma.cc/63DY-NHV5] ("Another participant is Holy Cross Ministries, a nonprofit organization [with a law office] that will train two community health workers to serve as bilingual medical-debt legal advocates. These individuals will extend the important services they already provide within the Salt Lake City community by offering limited-scope legal advice about medical debt and collateral issues.").

78. *See* Rhode & Ricca, *supra* note 33, at 2588 ("Most jurisdictions also have misdemeanor penalties and multiple authorities that enforce prohibitions, including state bar committees or counsel, state supreme court committees or commissions, state attorneys general, and local and county attorneys.").

79. Regarding criminal prosecutors' discretion, see, e.g., Bruce A. Green & Rebecca Roiphe, *A Fiduciary Theory of Prosecution*, 69 AM. U. L. REV. 805, 808 (2020) ("Most agree that prosecutorial discretion is an inevitable aspect of the criminal justice system, but there is little consensus on how prosecutors should prioritize competing concerns. Prosecutors tend to make decisions in an impressionistic way, weighing multiple interests that may be in tension . . . .").

80. *Cf.* Bruce A. Green & Marci Seville, *Case Study 2: Advising Grassroots Organizations*, 47 HOFSTRA L. REV. 33 (2018).

81. Acceptance of lawyers' multi-jurisdictional practice occurred in this way. *See* Bruce A. Green, *Taking Cues: Inferring Legality from Others' Conduct*, 75 FORDHAM L. REV. 1429, 1439–40 (2006) ("[A]lthough the wording of most state UPL laws had remained the same since they were adopted and courts generally had not narrowed their reach, the meaning of the laws had nevertheless changed [over time] to permit more extensive interstate law practice. What was the evidence of the change? It was the understandings of lawyers who regularly practiced across state lines as reflected in their conduct, together with the absence of enforcement. Lawyers did not believe they were violating the UPL law by performing occasional work in other states. Disciplinary agencies tacitly permitted prevailing practices." (footnotes omitted)).

It is especially hard for UPL to go entirely unnoticed when it occurs in a state courthouse and even harder when it occurs in the courtroom.[82] And yet, unrepresented parties' need for others' help may be so compelling that judges may occasionally tolerate or even encourage nonlawyers to engage in the practice of law. Professor Jessica Steinberg and her coauthors recently described how judges in certain domestic violence courts "are relying on a shadow network of nonlawyer professionals . . . to prepare pleadings, offer substantive and procedural information . . . , and provide counseling services" to alleged victims seeking protective orders—that is, "to substitute for the role counsel has traditionally played."[83] The nonlawyers have acted principally behind the scenes—in the shadows—but with the judges' knowledge and permission. The coauthors described this as "the phenomenon of trial judges as active participants in de facto deregulation" of the legal profession.[84] The problem, of course, is that this sort of law-defiant innovation cannot be publicized, evaluated, and, if successful, replicated. Additionally, it looks bad for judges to condone lawbreaking in their courts, however good the cause.

II. AN ALTERNATIVE ROUTE: TRIAL JUDGES' AND TRIAL COURTS' APPROVAL OF NONLAWYER ASSISTANCE

There is another potential route to UPL reform in state civil court proceedings, but it is currently impeded if not entirely closed off. If allowed, trial judges and trial courts who preside over civil proceedings might permit nonlawyers to render free assistance to parties appearing before them. This would enable the judges who are closest to the proceedings to decide that unrepresented parties would be well served by nonlawyers' assistance of a certain nature and that particular nonlawyers are qualified to provide the contemplated assistance, and then to oversee the nonlawyers to ensure that they are providing a useful service. To the extent that trial courts currently give this sort of approval–as in the case of the unidentified courts that allow nonlawyers to advise domestic violence victims[85]—they do so sub rosa.

At present, this route is rarely traveled because trial judges generally assume that they do not have the legal authority to approve a role for nonlawyers that would fall within the definition of the practice of law. In this respect, trial courts differ (or assume that they differ) from state supreme

82. *See* Rhode & Ricca, *supra* note 33, at 2603 (discussing a study of UPL enforcement action that found that more than half of the cases studied arose out of conduct in civil or criminal cases).

83. 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, 1316 (2021). In some jurisdictions, such as Wisconsin, nonlawyers are authorized to provide legal assistance in domestic violence cases. *See* Margaret F. Brown, *Domestic Violence Advocates' Exposure to Liability for Engaging in the Unauthorized Practice of Law*, 34 COLUM. J.L. & SOC. PROBS. 279, 293–95 (2001); Louise Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1125–26 (1995).

84. *See* Steinberg et al., *supra* note 83, at 1316.

85. *See supra* note 83 and accompanying text.

courts, which have express or inherent constitutional authority or statutory authority to regulate law practice,[86] including by determining who may practice law.[87] Trial courts possess some supervisory authority over their proceedings, including over lawyers who appear in cases before them,[88] but they do not possess authority equal to that of the state high courts. For example, they cannot authorize applicants to practice law in all of the state's courts or disbar lawyers for breaking rules. State trial judges, individually and collectively, are uncertain or doubtful that they possess the authority to decide who may assist parties in cases over which they preside. That is why in the domestic violence cases described above courts were careful not to call attention to nonlawyers' tacitly approved roles.[89]

State supreme courts could expressly delegate this authority to individual trial judges, subject to whatever limitations and conditions seem appropriate. Or they could delegate it to trial courts—that is, to the judges of individual courts acting collectively or through a chief judge or administrative judge. That would resolve any uncertainty regarding whether trial judges or trial courts can authorize nonlawyers to engage in the practice of law in their proceedings. State supreme courts *should* delegate this authority to lower courts for the purpose of promoting UPL reform that the higher courts do not have the resources, expertise, or inclination to undertake.

There is precedent for allowing trial judges to serve this sort of administrative role. In the nineteenth century, trial judges in some jurisdictions examined would-be lawyers and admitted them to the bar.[90]

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86. *See generally* Thomas M. Alpert, *The Inherent Power of the Courts to Regulate the Practice of Law: An Historical Analysis*, 32 BUFF. L. REV. 525 (1983); Charles W. Wolfram, *Inherent Powers in the Crucible of Lawyer Self-Protection: Reflections on the LLP Campaign*, 39 S. TEX. L. REV. 359 (1998); Charles W. Wolfram, *Lawyer Turf and Lawyer Regulation—The Role of the Inherent-Powers Doctrine*, 12 U. ARK. LITTLE ROCK L.J. 1 (1989). Although federal courts have authority to regulate lawyers appearing before them, the general authority to regulate the practice of law in the jurisdiction is reserved to state courts. *See* Fred C. Zacharias & Bruce A. Green, *Federal Court Authority to Regulate Lawyers: A Practice in Search of a Theory*, 56 VAND. L. REV. 1303, 1308 nn.12–13 (2003). State legislatures also have a role in policing lawyers. *See generally* Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market?*, 37 GA. L. REV. 1167 (2003); Quintin Johnstone, *The Unauthorized Practice Controversy, A Struggle Among Power Groups*, 4 U. KAN. L. REV. 1 (1955).

87. *See generally* Laurel A. Rigertas, *Lobbying and Litigating Against "Legal Bootleggers"—The Role of the Organized Bar in the Expansion of the Courts' Inherent Powers in the Early Twentieth Century*, 46 CAL. W. L. REV. 65 (2009) (tracing the rise of courts' authority, superseding that of legislatures, to define the practice of law).

88. *See* Fred C. Zacharias & Bruce A. Green, *Rationalizing Judicial Regulation of Lawyers*, 70 OHIO ST. L.J. 73, 73 (2009) ("State supreme courts are responsible for promulgating disciplinary codes and local court rules governing lawyers practicing in their jurisdictions. Trial courts apply or supplement these standards when, in the exercise of supervisory authority over lawyers and litigation, they disqualify or sanction lawyers engaged in cases before them." (footnotes omitted)).

89. *See supra* note 83 and accompanying text.

90. This was the practice in some states at the country's founding. For example, New York's Constitution provided that "all attorneys, solicitors, and counsellors at law hereafter appointed, be appointed by the court, and licensed by the first judge of the court in which they

Until 2002, South Carolina judges had discretion to permit nonlawyers to advocate for parties without a fee.[91] In some states, trial courts have discretion to allow nonlawyer officers of a corporation to represent the corporation in court.[92] And in various jurisdictions, administrative law judges (ALJs) have statutory authority to permit nonlawyers to assist parties in the proceedings over which the ALJs preside.[93] It might seem odd to give this discretionary authority to ALJs but to deny it to trial judges and trial courts, which should be equally capable of exercising this authority.

State trial judges' exercise of this authority might involve as little as permitting a caseworker or librarian to help a party complete a court-approved answer form or allowing a particular nonlawyer friend or family member to sit with the unrepresented party at counsel table and whisper advice.[94] Or it might include allowing a parent or guardian to appear on a child's behalf in a case that otherwise could not be pursued because no lawyer is willing to take it.[95] On a larger scale, trial courts might allow the courthouse's nonlawyer navigators to cross the line between legal information and legal advice,[96] or they could allow CASAs to engage more explicitly in advocacy.[97] Most ambitiously, judges might work with not-for-profit organizations, nonlawyer professionals, colleges or others in their jurisdiction to develop new programs in which nonlawyers assist unrepresented parties subject to judicial oversight and evaluation. For example, volunteer accountants and financial planners might be assembled

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respectively plead or practice, and be regulated by the rules and orders of said courts." N.Y. CONST. art. XXVII (1777). The practice continued on the early American frontier. *See, e.g.*, WILLIAM FRANCIS ENGLISH, THE PIONEER LAWYER AND JURIST IN MISSOURI 96 (1947) (stating that in 1841 "admission of attorneys was turned over to circuit judges"). Requirements for admission were low, however, and frontier judges admitted some "poorly trained and . . . unethical" practitioners. *Id.* at 96–97.

91. *See* S.C. CODE ANN. § 40-5-80 (1976), *amended by* 2002 S.C. Acts 307. In 2002, the South Carolina General Assembly repealed the portion of that code that permitted a citizen to represent another without compensation. *See* 2002 S.C. Acts 307.

92. *See* Vt. Agency of Nat. Res. v. Upper Valley Reg'l Landfill Corp., 621 A.2d 225, 228 (Vt. 1992) ("[C]ourts have discretion to permit an organization to appear through a nonattorney representative where the proposed representative establishes" specified conditions, including that "the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court . . . .").

93. *See* Amy Widman, *The False Premise of State Administrative Adjudication*, 61 HARV. J. ON LEGIS. 138, 158 & n.108 (2024) (citing ALASKA ADMIN. CODE tit. 2, § 64.160(a) (2023); FLA. ADMIN. CODE ANN. r. 28-106.106 (2024)).

94. In England nonlawyers, known as "McKenzie Friends," are allowed to provide such assistance to unrepresented parties with the court's permission and are subject to removal by the court for misbehavior. *See* Sandefur, *supra* note 31, at 294–95.

95. The prevailing rule is that a nonlawyer parent or guardian may not advocate for a minor child. *See, e.g.*, Byers-Watts v. Parker, 18 P.3d 1265 (Ariz. 2001). Likewise, the prevailing rule is that one holding a power of attorney for an incapacitated individual may not file papers or advocate on the principal's behalf. *See, e.g.*, Dude v. Lesperance, No. 01-2262, 2002 Wisc. App. LEXIS 1419 (Feb. 5, 2002).

96. *See supra* notes 39–42 and accompanying text; *see also* MARY E. MCCLYMONT, NONLAWYER NAVIGATORS IN STATE COURTS: PART II — AN UPDATE (2023).

97. *See supra* notes 37–38 and accompanying text.

and trained to help parties show that they are unable to pay court-ordered judgments, fines, or fees. Undergraduate or graduate programs in the locale might train students to provide discrete, routine legal assistance.[98] And, of course, social workers might be trained to assist domestic violence victims seeking orders of protection, as nonlawyers are already permitted to do in some jurisdictions.[99]

Trial courts might approve roles for nonlawyers outside their courtrooms as well as inside. For example, in cases pending before it, a local trial court might allow paralegals and community organizations to give legal advice and draft legal documents with training and some oversight by lawyers.[100] Currently, paralegals employed by lawyers can give only limited out-of-court assistance, which is allowed only if lawyers represent the client and assume ultimate responsibility for the nonlawyers' written work.[101] But courts could conceivably authorize lawyers to scale down their level of involvement in individual cases. For example, lawyers might undertake occasional spot-checking to ensure the quality of the nonlawyers' work and make themselves available to accept or advise about hard cases.

What is distinctive about this proposed route to UPL reform is that it is bottom-up, not top-down: instead of a state supreme court or legislature approving or creating a single program for nonlawyer practice in relevant courts throughout the state, individual trial judges and trial courts, if they are disposed to do so, would collaborate with nonlawyers in the locale to provide help that benefits the particular population of unrepresented litigants. Increased statewide efforts to expand opportunities for nonlawyer advocacy and assistance should certainly be encouraged as well. But this alternative route has notable advantages over top-down, statewide approaches to expanding nonlawyers' assistance.

This route offers greater flexibility than top-down, one-size-fits-all programs. Judges can work with nonlawyers to devise programs that make sense for their courtrooms. As mistakes are made or problems are identified, programs can make changes to fix them. Judges also can draw on distinctive local resources. In some jurisdictions, law students or other students might be available and willing to undergo training to assist unrepresented parties without a lawyer's supervision. In some jurisdictions, social services agencies or community groups may be willing to provide caseworkers or volunteers to help unrepresented parties. In some jurisdictions, individuals with financial expertise such as retired accountants may be willing to assist parties in showing that they lack the financial wherewithal to pay judgments, fines, or fees. Particular librarians might be willing and able to help parties in divorce cases select the right forms and fill them out. Statewide programs of nonlawyer assistance established by court rules or state statutes are less

98. *See supra* note 46.

99. *See supra* note 83.

100. *See* Paul R. Tremblay, *Surrogate Lawyering: Legal Guidance*, Sans *Lawyers*, 31 GEO. J. LEGAL ETHICS 377, 411–20 (2018).

101. *See, e.g.*, *In re* Stoutamire, 201 B.R. 592, 597–98 (Bankr. S.D. Ga. 1996).

likely to be a good fit for all the states' courtrooms and communities and will be much harder to refashion going forward in response to lessons learned.[102]

If judges are amenable, each courtroom or courthouse would become, in effect, a laboratory for experimentation and evaluation.[103] Because nonlawyers would give assistance openly, nonlawyers' work could be studied, allowing for the expansion of knowledge about what does and does not work. For example, the program described by Professor Steinberg and her colleagues, in which nonlawyers help parties in domestic violence cases,[104] could come out of the shadows and, ideally, demonstrate its success through client satisfaction surveys, interviews of the judges, analyses of outcomes, or other means. This would have implications even outside of judicial procedures. If judges and their collaborators can demonstrate the utility of nonlawyers' assistance, concerns about nonlawyers' competence and regulatory risks may be allayed. Successful practices and programs might provide models for other trial judges to replicate or for court systems to adopt on a statewide basis. Just as importantly, successful initiatives could provide models for nonlawyers to provide help outside of adjudication.

III. ANTICIPATED OBJECTIONS

Many institutions of the legal profession engage in law reform,[105] and the American Bar Association (ABA), the largest representative organization of U.S. lawyers, calls on individual lawyers to do so too: the Preamble to the ABA's Model Rules of Professional Conduct recognizes that "[a]s a public citizen, a lawyer should seek improvement of the law, access to the legal system, [and] the administration of justice."[106] But some lawyers may be unenthusiastic about this Essay's proposal for several reasons.

First, some may doubt whether trial courts can and will take advantage of whatever authority was delegated to them to expand nonlawyers' role in their

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102. Large-scale, statewide programs may have other advantages. They are likely to be the subject of longer study and to be developed with greater input, with the result that they may be better thought-out. But it is likely that the extensiveness of the development process, together with the political opposition that such large programs are likely to attract, helps explain why there are so few statewide programs: busy legislatures and state supreme courts are uninterested in devoting the necessary time to them.

103. Rebecca Sandefur has identified three principal questions for study, which might be paraphrased as: (1) whether the program meets unrepresented parties' need; (2) whether the assistance provided is of sufficient quality; and (3) whether nonlawyers are harming those whom they are assisting. *See* Sandefur, *supra* note 31. One can anticipate that, in certain courtrooms, lawyer advocacy will have advantages over nonlawyer advocacy—for example, nonlawyers may be less capable of navigating procedural complexities, less apt to challenge the judge, or unable to advance novel theories. *See generally* Anna E. Carpenter, Alyx Mark & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 LAW & SOC. INQUIRY 1023 (2017). But in a lawyerless courtroom, the question should not be whether nonlawyers are as capable as lawyers but whether otherwise unrepresented parties are benefitting from nonlawyers' assistance.

104. *See supra* note 83 and accompanying text.

105. *See generally* Elizabeth Chambliss & Bruce A. Green, *Some Realism About Bar Associations*, 57 DEPAUL L. REV. 425, 425–28 (2008).

106. MODEL RULES OF PROF. CONDUCT pmbl. ¶ 6 (AM. BAR ASS'N 2020).

courts, predicting that many judges will be uninterested or too burdened by their ordinary judicial responsibilities to devote time to procedural reform. But this objection sells judges short. Many currently find time for bar association involvement and other extrajudicial work, and some will have a sufficiently long-term commitment to the court to want to make the process fairer by drawing on nonlawyers' contributions.

Given trial judges' concern about the quality of justice in their courts, and given the strain on publicly funded legal services, some judges might be eager to adopt practices or develop programs that draw on nonlawyers, enabling state courtrooms to become laboratories for UPL experimentation and reform. Out of similar concern, trial courts and trial judges have previously inaugurated roles for nonlawyers that do not comprise the practice of law. For example, the CASA program, noted earlier, began with a single trial judge.[107] Further, judges may perceive that if nonlawyers help unrepresented parties, civil proceedings will become more efficient. Even if only a handful of judges initiate, oversee, and evaluate methods of nonlawyer assistance, they may launch practices and programs that prove successful and replicable, leading to meaningful improvement.

Second, some might object that nonlawyers who are permitted to offer free legal assistance will leave parties even worse off than if they had been unassisted. The specter that nonlawyers will perform badly—typically supported by anecdote rather than data[108]—is raised almost any time proposals are made for nonlawyers to offer legal assistance, even assistance as modest as helping others complete court-approved legal forms.

One answer is that trained nonlawyers can capably do *some* of the work of lawyers, including in civil litigation, because UPL restrictions are overbroad, extending beyond the situations in which nonlawyers are categorically incapable of being helpful. As noted previously, studies show that, when permitted, nonlawyers have capably performed discrete legal tasks.[109] It stands to reason that this would be so given the UPL laws' reach. For example, even though small claims court procedure is designed to be navigable by most unrepresented parties, the Virginia State Bar's Standing Committee on UPL has forbidden nonlawyer social workers from assisting unrepresented parties in filling out forms needed to proceed in small claims court.[110] If lay parties are presumptively able to complete the forms without prior training or experience, one can presume that social workers can be trained to competently complete the forms for others.

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107. *See* Piraino, *supra* note 37, at 66.

108. *See* Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 1 J. INST. STUD. LEGAL ETHICS 197, 205 (1996) ("Although it is clear that such abuses do occur, this should not be the only relevant consideration. In evaluating the public interest, we need to know not just whether consumer problems arise, but also how often, and compared to what? We also need to know how well the current system responds to nonlawyer abuses and at what cost . . . . Are enforcement structures adequate to deter and remedy abuses? All too often, opponents of lay competition finesse these questions by relying on unsupported or anecdotal assertions.").

109. *See supra* note 31 and accompanying text.

110. *See* Va. Comm. on the Unauthorized Prac. of L., Op. 207 (2014).

Further, the risk of harm to unrepresented parties will be significantly minimized because of the trial court's involvement. Given their firsthand experience, trial judges are uniquely positioned to identify what roles nonlawyers might most usefully serve in trial court proceedings.[111] The judge can assess the extent to which unrepresented parties would benefit from nonlawyers' help and limit nonlawyers' role to contexts in which it is most needed. The judge will also be able to ascertain participating nonlawyers' ability to provide the offered assistance. Moreover, the judge will have some capacity to regulate participating nonlawyers for the protection and benefit of unrepresented parties and to preserve the integrity of proceedings. Judges can exclude nonlawyers who are not competent or who disrespect regulatory responsibilities or require these nonlawyers to obtain further training.

Third, some may doubt trial judges' competence to institute UPL reform in their courtrooms, predicting that judges will do a bad job because, for example, they lack the requisite administrative expertise, or because they will give the new project insufficient attention or oversight. This prediction cuts against the ordinary assumptions of our regulatory process, however. Courts give lawyers a license to undertake any legal work, subject to the understanding that, as a matter of self-regulation, lawyers will either decline work that they are not capable of doing or will make themselves capable.[112] We can assume the same for trial judges and trial courts—namely, that judges will not experiment with nonlawyer assistance in their courtrooms unless the judges are capable of ensuring that nonlawyers generally provide useful assistance.

The absence of compensation should further reduce the risk of harm as well as make trial courts' UPL experiments more easily administrable. UPL reforms that involve compensation, such as certifying paralegals to provide comparatively simple and discrete legal services, elicit concerns that clients will be financially disadvantaged, if not cheated. Such proposals may also draw opposition from self-interested parties concerned about anticompetitive effects. Removing compensation from the equation both eliminates the risk of financial exploitation and simplifies judicial oversight because the court will not have to police the financial relationship between the party and the nonlawyer assistant.

Fourth, some may argue that empowering nonlawyers in civil actions is simply not the best way to help unrepresented parties, and that it would be better to establish a right to counsel,[113] to simplify the judicial process so that

111. *See generally* Bridget Mary McCormack, *Staying Off the Sidelines: Judges as Agents for Justice System Reform*, 131 YALE L.J.F. 175 (2021).

112. *See* MODEL RULES OF PROF. CONDUCT r. 1.1 cmts. 1–2, 4 (2020); *see also* Bruce A. Green, *Lethal Fiction: The Meaning of "Counsel" in the Sixth Amendment*, 78 IOWA L. REV. 433, 482–83 (1993) ("The bar has traditionally assumed . . . that new lawyers . . . will receive training and supervision in practice and will not assume ultimate responsibility for a client's cause until, through that means, they have become qualified to do so.").

113. *See supra* note 13 and accompanying text.

parties need no one else's help,[114] or to find ways to obviate the need for civil proceedings altogether.[115] There is room for multiple approaches, however. Expanding nonlawyers' role is not inconsistent with, and will not detract from, other reform efforts. And even if other reforms may be preferable, nonlawyers can make additional contributions.

The further answer to all four of these objections is that they may be wrong, and the only way to find out is through experimentation. The cost of experimentation is low, because if experiments in nonlawyer assistance fail, judges can generally ameliorate the harms and correct or shut down the experiments. Plus, failures will be valuable in themselves by helping make the case for other reforms.[116]

UPL laws are justified largely by unproven assumptions about nonlawyers' incompetence and the harm that they could cause. State supreme courts generally lack the wherewithal to initiate and oversee experiments that many expect would disprove these assumptions.[117] They should free up trial judges to assume this responsibility. The possibility of occasional failure is not a compelling objection to judicial experimentation, particularly given the current state of affairs whereby so many people are unrepresented.[118]

CONCLUSION

The civil adjudicative process needs lawyers, but lawyers are unavailable to most low-income parties in consumer debt cases, eviction proceedings, and family law cases, among others. There have been repeated calls to

114. *See, e.g.*, Rebecca Aviel, *Why Civil* Gideon *Won't Fix Family Law*, 122 YALE L.J. 2106 (2013); Benjamin H. Barton, *Against Civil* Gideon *(and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227 (2010); Jeanne Charn, *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206 (2013); Jessica K. Steinberg, *Demand Side Reform in Poor Peoples' Court*, 47 CONN. L. REV. 741 (2015).

115. *See, e.g.*, Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1250–51 (2022) ("[A]lthough we support various court reforms for reasons beyond the scope of this Essay, we do not suggest that court-driven changes, such as the provision of additional procedural protections, would lead to systems change of the order that challenging racial capitalism requires."); Lauren Sudeall, *Delegalization*, 75 STAN. L. REV. ONLINE 116 (2023).

116. *See* Charn, *supra* note 114, at 2233 (discussing how studies showing "that claimants fared as well on their own as with lawyer assistance" promote the argument for facilitating parties' self-representation).

117. Even state high courts that are highly committed to promoting access to justice may lack the time, resources, or political capital to promote statewide programs that expand nonlawyers' assistance. By way of example, in 2012, New York's Chief Judge of the Court of Appeals received a task force report encouraging a pilot program to expand the assistance that nonlawyers may provide. *See* Lippman, *supra* note 1, at 1585–87. The New York City Bar Association issued a report supporting the recommendation, and Chief Judge Jonathan Lippman was receptive, acknowledging the utility of the legal advice and assistance that nonlawyers provide in other jurisdictions. *Id.*; N.Y.C. BAR COMM'N ON PROF'L RESP., *supra* note 63, at 1 (endorsing the task force's report). In the decade that followed, however, the state's high court did not authorize any initiatives allowing nonlawyers to offer otherwise forbidden legal advice or assistance.

118. *See* Green, *supra* note 17, at 1273–74 ("[E]xisting empirical data looks favorably on the use of nonlawyers, and experimentation would provide additional information.").

address the problem by letting unrepresented civil parties seek some legal assistance from nonlawyers, as parties may do in many arbitral and administrative adjudications. But this would first require removing barriers imposed by UPL laws, whether through legislative initiative or, more likely, through action by state supreme courts.

One easy step would be for state supreme courts to share some of their regulatory authority with trial courts. Given the opportunity, trial courts could make their proceedings more accessible to unrepresented parties, and fairer for them, by broadening the assistance that nonlawyers can provide. Trial judges, being closest to the action, are well situated to identify how nonlawyers can capably offer legal assistance to those who most need it and to then oversee and evaluate nonlawyers' work.

APPENDIX

PROCEDURAL ROUTES TO EXPANDING NONLAWYER ASSISTANCE		
Method	Institution	Description
Permissive interpretation of UPL laws	State courts	State courts interpreting nonlawyer conduct as *not* "the practice of law"
Federal authorization	Congress and federal administrative agencies	Federal law or regulation authorizing nonlawyer assistance in federal proceedings
State legislative authorization	State legislatures	State law authorizing nonlawyers to engage in limited legal practice
State administrative authorization	State administrative agencies	State regulation authorizing nonlawyer assistance in state administrative proceedings
State judicial authorization	State supreme courts	Court rules and opinions authorizing nonlawyers to engage in limited legal practice
Exercise of power delegated by the state supreme court	State administrative agencies (e.g., Utah "sandbox")	Approving applications for limited nonlawyer practice
Nonenforcement	State courts and regulators	Authorities ignoring UPL when it occurs
Exercise of power delegated by the state supreme court	State trial courts	Approving and overseeing limited nonlawyer assistance in trial court proceedings (proposed)