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## The Harm and Challenges of Limited Licensing

For the past 75 years, the Louisiana State Bar Association (LSBA) has committed itself to serving the public and the profession. This mission is critical to ensuring the proper administration of justice and public confidence in the system itself. Without lawyers, the rule of law fails, and fails immediately. Autocrats know this and target judges and lawyers when solidifying their hold on power. Earlier this year, Turkey arrested six human rights lawyers in the middle of the night. Media reports suggest that China still routinely engages in the mass detention of lawyers.

While it is important to fight against government threats and intimidation designed to deter lawyers from doing their job, another war against the legal profession is currently being waged on two unexpected battlefields – Silicon Valley and Washington State. In Silicon Valley, high-tech businesses see an opportunity to profit by “disrupting” the legal market. They point to the unmet legal needs of the middle class and poor and to state court systems that are largely overwhelmed, inefficient and ineffective. These entrepreneurs believe that technology offers the means for displacing the current system for the delivery of legal services with something new and more efficient and are wagering billions in venture capital to turn their vision into reality.

Meanwhile, the Washington Supreme Court has implemented a controversial rule through which it licenses non-lawyers called limited license legal technicians (Triple LTs) to practice law. Triple LTs are permitted to operate businesses with-

out the supervision of a lawyer, conduct factual investigations, provide legal advice and opinions to clients, prepare legal documents for filing in court, and advise clients on how to present their case to the court. Triple LTs are not required to graduate from law school. They are not required to graduate from a four-year college. With the right curriculum, an associate degree from a two-year community college will do. Law schools faced with declining enrollments see opportunity and love the idea.

Bar associations have reacted to these challenges in different ways. The North Carolina State Bar challenged Legal Zoom and found itself embroiled in an antitrust suit. The Florida Bar is looking for ways to partner with companies like Avvo. For its part, the Washington State Bar Association twice opposed the rule change authorizing Triple LTs only to be overruled by the Washington Supreme Court. Washington State Supreme Court Chief Justice Barbara A. Madsen identified four drivers for the Court’s decision: 1) the growing gap in access to justice; 2) increasing numbers of pro se litigants; 3) the rising cost of law school; and 4) the proliferation of unauthorized legal service providers.<sup>1</sup>

Surprisingly to some and shockingly to others, the American Bar Association is on a path toward endorsing programs authorizing the practice of law by Triple LTs and other non-traditional legal service providers. Over the past two years, the ABA Commission on the Future of Legal Services has been examining how legal services are delivered in the United

States and recommending innovations to improve the delivery of, and the public’s access to, those services. The Commission has held summits, town hall meetings, issued working papers and solicited public comment. On the whole, the effort has been impressive in bringing together scholars, thought leaders, lawyers and judges from across the country. But the outcome of the Commission has never been in doubt. Chief Justice Madsen is a member of the Commission and chairs a key project team. The balance of the Commission consists almost exclusively of law professors, lawyers from large law firms in big cities, and legal service attorneys. Solo and small-firm practitioners are largely unrepresented on the Commission and their voices ignored.

Thus far, the Commission has issued several working papers.<sup>2</sup> Those papers generally take the position that, rather than representing a significant threat to the public and rule of law, opening up the practice of law to non-lawyers will benefit consumers and reduce pro se litigation. The working papers correctly recognize that non-lawyers are currently practicing law but, rather than propose a mechanism for combatting this illegal and, in many states, criminal conduct, the Commission assumes that non-lawyer legal service providers are an inevitability and that it would be better for the public to take steps to regulate them rather than ignore them.

The New Jersey State Bar Association has come out vocally against the work of the Commission. In one letter to the ABA Commission, New Jersey Bar State Association President Miles S. Winder III

wrote that instead of seeking “creative ways to expand upon the many innovative approaches that already exist in the legal community to increase access to legal services while promoting the core values of the profession, the Commission appears driven to sanction the practice of law by non-lawyers regardless of all other concerns.”<sup>23</sup> The ABA Solo, Small Firm and General Practice Division has also voiced its concern stating that the “ABA should be at the forefront at protecting the American Public and its membership and should be advocating and educating the public as to why one should retain a lawyer and not advocating or endorsing non-lawyers offering legal services which will directly compete with the solo and small firm lawyer.”<sup>24</sup>

In my personal view, non-lawyers lack the education, expertise and judgment to provide competent legal services and are certain to take advantage of consumers if permitted to practice law outside the regulatory controls. Moreover, the justifications for permitting non-lawyers to practice law are ill-conceived. Triple LTs and other licensed non-lawyer practitioners are unlikely to fill the access to justice gap in a meaningful way because they have the same profit incentive as any other commercial enterprise and will be subject to many of the same cost constraints as attorneys. Additionally, most states have an abundance of lawyers willing to provide affordable and timely legal services to underserved members of the public.

Identifying innovative business models that will generate cost-saving efficiencies for attorneys and incentivize them to market low-cost legal services would be a far more effective strategy for expanding the availability of affordable legal services to the public than permitting consumers to receive services from less qualified and less effective non-lawyers. For example, the Louisiana Civil Justice Center, in partnership with the LSBA, is now accepting applications for the third class of its Legal Innovators For Tomorrow (LIFT) Incubator and Accelerator Program. The program provides a two-year fellowship for lawyers just entering the practice of law to explore ways for developing innovative business models for solo and small-firm general practices. The program supports

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fellows by providing business and practice management training, access to an expansive network of commercial, public interest and in-house attorneys, and substantive law training in high-demand areas of legal practice.

There also is no reason to conclude that the widespread practice of law by non-lawyers is inevitable or acceptable. Most states have unauthorized practice of law statutes. Lobbying for enhanced penalties and expanded enforcement of these laws would serve the public interest and represents an effective response to the impact of technology and globalization. The LSBA undertook this strategy in the current legislative session in which it worked with legislators, the Louisiana Attorney General and the Louisiana District Attorneys Association to sponsor a bill that expands the current unauthorized practice of law statute in Louisiana to create a civil right of action for consumers and other stakeholders against non-lawyers engaged in the practice of law.

Most significantly, authorizing non-lawyers to practice law could result in the public being denied access to lawyers en-

tirely as lawyers migrate away from practice areas where the unauthorized practice of law has been sanctioned by the State. This outcome already may be happening in Washington where law students are reportedly being told “to stay clear” of family law and immigration law because young attorneys, opening their own firms and carrying high debt loads and overhead, will not be able to compete effectively with Triple LTs.<sup>5</sup>

In short, the economic justifications for opening up the practice of law to non-lawyers do not hold water and the impact of such a strategy is potentially as detrimental to the public and rule of law as other less well-intentioned attacks on the legal profession. The LSBA’s House of Delegates should take a stand before the movement reaches our borders. One option – adopt a resolution stating while the LSBA embraces competition and believes that the benefits of competition and innovation can lower fees, mitigate costs and promote access to justice, the public suffers serious injury when non-lawyers engage in the unauthorized practice of law and, as such, the LSBA will oppose any state legislation, rules or regulations that would have the purpose or effect of authorizing non-lawyers to practice law or reduce the penalties or sanctions applicable to such unlawful conduct. Let’s discuss this more at the Annual Meeting.

## FOOTNOTES

1. See Hon. Barbara Madsen, *The Promise and Challenges of Limited Licensing*, 65 S.C.L.R. 533, 534-35 (2014).

2. The working papers, roster and other information about the ABA Commission on the Future of Legal Services are available at: [www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html).

3. Letter from Miles S. Windner III to the ABA Commission on the Future of Legal Services, dated April 28, 2016, available at: [www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services/Comments1.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/Comments1.html).

4. Comment from ABA Solo, Small Firm and General Practice Division to the ABA Commission on the Future of Legal Services, dated Dec 30, 2015, available at: [www.americanbar.org/content/dam/aba/images/office\\_president/lspcomments\\_solo\\_small\\_firm\\_and\\_general\\_practice\\_division.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/lspcomments_solo_small_firm_and_general_practice_division.pdf).

5. *Id.*

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