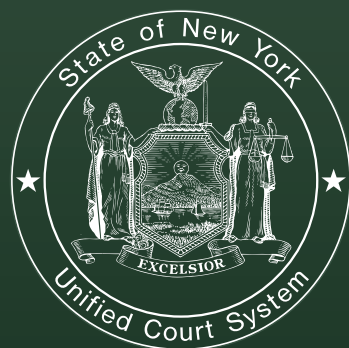


NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT OF THE LAW SCHOOL INVOLVEMENT WORKING GROUP



FIFTH ANNUAL  
**LAW SCHOOL  
CONFERENCE**

**ACCESS TO JUSTICE: THE ROLE OF  
NEW YORK'S LAW SCHOOLS IN  
HELPING MEET THE ESSENTIAL  
CIVIL LEGAL NEEDS OF LOW-  
INCOME NEW YORKERS**

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Based on the Conference Convened by the New York State  
Permanent Commission on Access to Justice at  
New York University School of Law, May 17, 2016

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**HELAINÉ M. BARNETT**

Chair, New York State Permanent Commission on Access to Justice

NOVEMBER 2016

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# CONTENTS

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<b>2016 KEY RECOMMENDATIONS TO THE PERMANENT COMMISSION .....</b>	<b>3</b>
<b>OVERVIEW OF THE FIFTH ANNUAL CONFERENCE .....</b>	<b>4</b>
<b>REPORTS FROM CONFERENCE WORK GROUP SESSIONS .....</b>	<b>8</b>
<b>1. Opening the Doors: Access to Law School     as an Access-to-Justice Issue .....</b>	<b>8</b>
<b>2. Infusing Diversity Issues and Access to Justice into the Law School     Curriculum: Understanding the Skills, Professional Values     and Cultural Competencies .....</b>	<b>11</b>
<b>3. Non-Lawyers Working to Help Narrow the Justice Gap     and the Role of Law Schools and Law Students .....</b>	<b>16</b>
<b>4. New Models for Cost Effective Legal Service Delivery     to Enhance Access to Justice .....</b>	<b>20</b>
<b>AFTERNOON PLENARY SESSION .....</b>	<b>22</b>
<b>EXHIBIT 1: Fifth Annual Law School Access To Justice Conference Program .....</b>	<b>23</b>
<b>EXHIBIT 2: WORK GROUP A - Opening the Doors: Access to Law School as an Access-to-Justice Issue: Options for Law Schools to Support Access-to-Justice Activities and Involvement of Diverse Students .....</b>	<b>35</b>
<b>EXHIBIT 3: WORK GROUP B- Infusing Diversity Issues and Access to Justice into the Law School Curriculum: Examples of Learning Outcomes Focused on Diversity &amp; Access-to-Justice Issues .....</b>	<b>37</b>



# 2016 KEY RECOMMENDATIONS TO THE PERMANENT COMMISSION ON ACCESS TO JUSTICE

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- 1. Law schools should take a three-pronged approach to broadening access to a legal education:**
  - A.** Law schools should have more flexible admissions processes that consider and weigh a broader range of qualifying criteria beyond grade point averages and standardized admission test scores.
  - B.** Law schools should build relationships with their communities to foster pipelines to the legal profession for students who might not otherwise consider law school.
  - C.** Law Schools should take greater steps to foster success of a diverse law student body.
  
- 2. Law schools should develop at least one institutional learning outcome for students related to access to justice in furtherance of ABA Standard 302<sup>1</sup> and Court of Appeals Rule 520.18:<sup>2</sup>**
  - A.** To ensure students have the opportunity to meet that learning outcome, law schools should identify courses in the required curriculum where this learning outcome is or should be addressed.
  - B.** Once the courses have been identified, course-level learning outcomes related to access to justice should be specifically set out in the faculty member's syllabus.
  - C.** Assessment tools should be developed and implemented that will evaluate whether students have achieved the outcome.
  
- 3. Law Schools should recognize the value of non-lawyer assistance in the legal services delivery system given the salutary impact non-lawyers can have in enabling access to justice:**
  - A.** Encourage law schools to identify ways for law students to partner with non-attorneys, e.g. social workers, financial counselors, housing advocates, and to foster partnerships between student-run projects and non-lawyer programs.
  - B.** Encourage law schools to recruit students who demonstrate an interest in law, for example, by working with community programs like Legal Hand.
  - C.** Encourage law schools to consider creating training programs for non-lawyers; e.g., language access project like Project Totem at Albany.

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1 ABA Standard 302 provides, in relevant part, that "A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of the substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession."

2 NY Court of Appeals Rule 520.18, Skills Competency Requirement for Admission, states that "Every applicant for admission to practice...shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services in this State. An applicant may satisfy this requirement by submitting proof of compliance with one of [five pathways]." available at <http://www.nycourts.gov/ctapps/520rules10.htm#B18>

#### 4. The Law School Conference Should Continue to be Convened Annually and be Supported by the Statewide Law School Access to Justice Council.

The annual conference provides a unique opportunity for New York's law schools and the legal profession to explore collaborative efforts to expand access to justice. A survey conducted subsequent to this year's conference indicated strong support for continuing the annual conference and its collegial work group format. The Statewide Law School Access to Justice Council serves as an incubator for developing conference themes and identifying speakers, and supports ongoing projects generated from the conference work groups.

## OVERVIEW OF THE FIFTH ANNUAL LAW SCHOOL CONFERENCE

The Fifth Annual Law School Conference was convened by the New York State Permanent Commission on Access to Justice (Permanent Commission) on May 17, 2016 at New York University School of Law. Each year, the conference draws deans, administrators, professors, law students, including Pro Bono Scholars, legal services providers and members of the bench and bar, together to discuss access-to-justice issues.<sup>3</sup> This year's 170 attendees heard opening remarks from the Chair of the Permanent Commission, Helaine M. Barnett, the Dean of New York University School of Law, Trevor W. Morrison, and the Chief Judge of New York State, Hon. Janet DiFiore, each underscoring the significant role and contribution New York's 15 law schools and law students contribute to narrowing the justice gap.<sup>4</sup>

Since the first Law School Access-to-Justice Conference in 2012, initiatives to increase the involvement of New York's law schools and law students in efforts to expand access to justice have had a profound impact. Progress has been made to integrate access to justice issues and cultural competency principles into curricular and clinical offerings in our law schools to ensure law students will be equipped to sensitively and effectively counsel clients from diverse communities. The pro bono requirement that all candidates for bar admission in New York perform 50 hours of pro bono legal work offers every student an experiential skills and professional values learning opportunity,<sup>5</sup> inspiring some students to become Pro Bono Scholars and dedicate their final law school semester to public service legal work. Over the years, ideas generated from the opening plenary panels and work group sessions have produced recommendations adopted by the Commission, in addition to sparking pro bono projects and collaborations with legal and non-legal community partners, with the net result of improving access

3 Reports from the Annual Law School Conferences are contained in Appendix 15 to the respective Annual Report to the Chief Judge from 2012-2015, available at <http://www.nycourts.gov/accesstojusticecommission/index.shtml>. The history of the Law School Conference is recounted in Appendix 15 to the 2013 Annual Report to the Chief Judge, <http://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf>. As noted there, the predecessor to the Permanent Commission on Access to Justice, the Task Force to Expand Access to Civil Legal Services in New York, was appointed by former Chief Judge Jonathan Lippman in 2010 to develop a comprehensive approach to the provision of civil legal services to low income New Yorkers. (By order of the Chief Judge in 2015, the Task Force was institutionalized to continue its work to narrow New York's justice gap.) Beginning in 2010, the Chief Judge, assisted by the Commission, held four annual statewide hearings to assess the level of unmet need for civil legal services in New York. Subsequent to the annual hearings, the Commission prepares a Report to the Chief Judge, as requested by the 2010 joint legislative resolution, with recommendations to address the documented unmet need for civil legal services in New York. Over the past six years, the Annual Reports have detailed the crisis in our legal system resulting from the lack of access to civil legal services for millions of low-income New Yorkers. Due to the contraction of resources in both the public and private sectors, the Commission encourages all the constituent organizations in New York's legal system to work collaboratively to find solutions to this crisis

4 The 2016 Law School Conference Program is reproduced in Exhibit 1.

5 In 2015, 8868 individuals were admitted to the New York bar and either completed 50 hours or more of qualifying pro bono legal assistance or a semester of field work, in the case of the 107 pro bono scholars. (See <http://www.nycourts.gov/ctapps/news/annrpt/AnnRpt2015.pdf>).

to justice for our most vulnerable citizens.<sup>6</sup> Each year, the Law School Conference Planning Committee identifies topical access-to-justice issues for the opening plenary session that are expected to inspire further discussion in the work groups. The high cost of a legal education, declining enrollments and a contracting market for legal jobs have generated urgency about what more New York's law schools can do to improve access to equal justice for New Yorkers who face barriers due to race, poverty, gender identity, lack of diversity and their myriad intersections.

Fordham Law School Dean Matthew Diller, Chair of the Commission's Law School Involvement Working Group, which coordinates the annual conference and organizes its planning committee, introduced this year's morning plenary session, "Race, Poverty, Identity: Diversity Issues and Access to Civil Justice," and the keynote speaker Harvard Law School Professor, Charles J. Ogletree, Jr. Dean Diller referenced the impact of Professor Ogletree's legal work and scholarship on civil rights and his influence on scores of young lawyers to give voice, with respect and integrity, to unpopular positions and causes. Professor Ogletree noted that large percentages of Americans, regardless of race, were not confident that judges are free from bias, and that discrimination is a real obstacle to access to justice. It is important, Professor Ogletree remarked, to create enduring models of legal service to reach all sectors of our diverse population with dignity.

The panel discussion following Professor Ogletree's address focused on the role legal professionals can serve to improve access to justice for individuals and communities confronting race, poverty and identity barriers. Through personal experiences and robust dialogue, the panelists parsed ideas and offered tools for attendees to help promote equal access to civil justice.

Maya Wiley, then Counsel to NYC Mayor Bill de Blasio, emphasized the foundational need to create a culture of respect, where tolerance and understanding govern. Reflecting back on her efforts, while a law student, to engage fellow students, faculty, and, importantly, the administration, to assist in overcoming discrimination against and securing assistance for people infected with HIV-AIDS, Ms. Wiley described law schools as incubators of solutions to social challenges. It is critical that institutions, both public and private, embrace social problems and issues that motivate student protests and student activism to find solutions and develop appropriate protocols that are responsive to student concerns. Ms. Wiley commented on the immense value of clinical experience for law students to ensure they can serve clients whose experiences are unlike their own. Concurrently, law schools should incorporate social science learning to develop social consciousness in students. This, Ms. Wiley indicated is key to training students to be culturally competent lawyers. She also noted that creating a stronger pro bono structure within city government, which the current administration is building, will encourage investment of governmental capital in efforts to further access to justice.

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6 Recommendations initially made by stakeholders at prior Annual Law School Conferences that have since been successfully implemented, include, for example (a) development of a Handbook of Best Practices for Supervising Law Student Pro Bono Work; (b) adoption of New York Court of Appeals Rule 520.16 in 2013 mandating 50 hours of pro bono service before seeking admission to the New York bar; (c) formation of the Statewide Law School Access to Justice Council to create a forum for stakeholders to discuss and address access to justice activities; (d) pilot of a Statewide Consortium Website for Student Pro Bono Opportunities; (e) support for the Pro Bono Scholars Program allowing law students to sit for the bar exam early and spend the last semester of law school in a supervised, full-time pro bono placement; (f) modification of law school curricula to increase awareness of access to justice issues and to better prepare law students for public service; and (g) support for the Committee on Non-Lawyers and the Justice Gap to find opportunities for non-lawyers to expand access to justice in specific areas. (See PERMANENT COMMISSION ON ACCESS TO JUSTICE, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Permanent Commission's Working Group on Law School Involvement (Nov. 2015), available at [https://www.nycourts.gov/accesstojusticecommission/PDF/2015\\_Access\\_to\\_Justice-Appendices.pdf](https://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Appendices.pdf); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2014), available at [https://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report\\_Appendices\\_Vol%202.pdf](https://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report_Appendices_Vol%202.pdf); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2013), available at <https://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf>; TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2012), available at <https://www.nycourts.gov/accesstojusticecommission/PDF/CLS2012-APPENDICES.pdf>).

Judge Fern Fisher, Director of the New York State Courts Access to Justice Program, stressed the need for law schools to educate students about the impact of poverty, and develop a student body that is culturally competent and responsive to current social issues. Judges must be sensitive and made aware of the pervasive reach of poverty – how it not only affects a client’s legal posture in court but dictates an individual’s interaction with the court, e.g. a person with limited literacy may need an order orally recited not just be provided with a written document. The toll of poverty is palpable as evidenced by strained civil dockets in New York’s housing, family and trial courts, where inordinate numbers of unrepresented low-income New Yorkers appear, confronted by challenges to their essentials of life. Judge Fisher emphasized that it is critical for judges and lawyers to have a real appreciation of how poverty affects justice, individually and institutionally. Likewise, this appreciation must be imparted to law students across the curriculum-- in classroom instruction, texts, clinical and externship offerings, as well as poverty simulations. Education and understanding, Judge Fisher posited, can ensure both access to justice and the fair administration of justice for all people.

Jennifer Ching, Project Director at Queens Legal Services/Legal Services NYC, observed that it is a core value of the legal profession to ensure justice is accessible, with effective communication being a key component. Indeed, this message is essential all along the pipeline, particularly for students who will consider applying to law school. Ms. Ching spoke for all the panelists stating that law schools should teach law in an accessible manner, that connections between practical/experiential learning and theoretical teaching should be meaningfully demonstrated, and that the language used both to teach law and counsel clients must be more responsive to the diverse populations living in poverty. Ms. Ching remarked that segregation is exacerbated by entrenched legal culture and that we, as leaders of the legal profession, are responsible for changing attitudes and addressing structural racism front and center.

To this end, New York Law School Professor Deborah Archer indicated that it is incumbent upon law professors and faculty to raise diversity issues in every law school subject and create space for this conversation in every class. Professor Archer noted that faculty should be willing to share their experiences and facilitate difficult conversations, to create an environment of tolerance and deference where students will feel comfortable. Using social media, television episodes and assigned readings are useful tools to encourage trenchant dialogue.<sup>7</sup> Professor Archer noted that it is the responsibility of the professors to help students translate activism into practical steps to help effectuate change. It is critical that the tenets of civil rights lawyering be imparted, particularly in times of protest, tension and community uproar, to ensure gains endure.

Columbia’s Executive Vice President for University Life and Clinical Law Professor Suzanne Goldberg, framed one essential inquiry for schools and faculty: “What does it take for a student to thrive?” Our social environment is ever-changing and we must inspire students from all backgrounds to promote change. Personal stories are at once powerful and empowering. Multidimensional approaches, using principles from political science, cognitive psychology or marketing, can reach and empower a broad population of students to engage in efforts of social change. For example, Professor Goldberg encouraged individuals to consider how a public health campaign targets different factions in the community distinct from messages directed at individuals. Next, consider the professionalism of a lawyer: to be a good lawyer and an effective advocate, the lawyer must understand all of the arguments and strategically select the one that will best serve the client. On some level, this is a marketing tool and can be employed to reach students. At the outset, issues of access to civil justice must be infused into law school. Students must be educated about what the justice gap is and taught how to expand access to justice. Further, providing students the opportunity to represent clients makes a lasting impression and serves as a way to influence behavior and attitudes.

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<sup>7</sup> For example, Ta-Nehishi Coates, “The Case for Reparations” (The Atlantic, June 2014); The Wire (HBO.com); Dave Chappelle on racial draft (<https://www.youtube.com/watch?v=dNkmIWFoDtk>).



In concluding the plenary discussion, the panelists universally agreed that students should be more fully educated about the civil justice gap and how racism, poverty and identity prevents people from thriving and receiving civil justice. The legal profession should consider how to better serve marginalized communities: how can lawyering more effectively serve diverse individuals? Social change comes incrementally; providing law students with opportunities for practical experiences, including clinical and other experiential learning, like poverty simulations, can influence behavior and communication skills, ultimately producing social change. Law students who are trained to be culturally competent and sensitive, are educated about poverty and the history of civil rights laws, and have been exposed to diversity issues across the law school curriculum, will be the new agents of social change who help close the justice gap in New York.

Dean Diller adjourned the morning plenary and directed participants to join their assigned work groups where discussions on targeted themes could serve to integrate the issues raised by the plenary panel. For this year's conference, the four work group sessions opened with introductory panels and, in some instances, short break-out sessions to establish action items. Following a lunch break, the work group sessions resumed for further panel presentations and small group discussions to develop recommendations to present at the afternoon plenary session. These recommendations inform the Commission in developing proposed recommendations to include in its Annual Report to the Chief Judge on the work underway to bridge the justice gap, as requested in the 2010 Joint Legislative Resolution<sup>8</sup> and in furtherance of the 2015 Joint Legislative Resolution, which adopted a State policy that all New Yorkers are entitled to effective civil legal assistance when confronting matters involving the essentials of life (housing, family matters, access to health care and education benefits, and subsistence income).<sup>9</sup>

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8 The Resolution is reproduced in Appendix 3 of the 2010 Annual Report to the Chief Judge available at <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-Appendices.pdf>.

9 The Resolution is reproduced in footnote 17 of the 2015 Annual Report to the Chief Judge available at [http://www.nycourts.gov/accesstojusticecommission/PDF/2015\\_Access\\_to\\_Justice-Report-V5.pdf](http://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf) (<https://www.nysenate.gov/legislation/resolutions/2015/c776>).

# REPORTS FROM CONFERENCE WORK GROUP SESSIONS

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## 1. OPENING THE DOORS: ACCESS TO LAW SCHOOL AS AN ACCESS-TO-JUSTICE ISSUE

*Facilitator:* **Lillian M. Moy**

*Executive Director, Legal Aid Society of Northeastern New York*

*Panelists:*

**Charles I. Auffant**

*Clinical Professor of Law*

*S.I. Newhouse Center for Law & Justice, Rutgers School of Law*

**Elaine M. Chiu**

*Professor of Law*

*Director, Ronald H. Brown Center for Equal Rights and Economic Development*

*St. John's University School of Law*

**Robin A. Lenhardt**

*Professor of Law*

*Director, Center on Race, Law and Justice*

*Fordham University School of Law*

**Anne Williams-Isom**

*Chief Executive Officer*

*Harlem Children's Zone*

### OVERVIEW

The Work Group session addressed how access to law school affects access to civil justice; does who becomes a lawyer affect who receives legal services? Law schools have a variety of approaches to addressing issues of race, identity and diversity that can limit access to a legal education and the legal profession. The Work Group explored law school efforts to nurture pipeline opportunities to legal education and the effect of economic considerations, such as law school tuition, financial aid, student debt and loan forgiveness, on the composition of the law school class.

### RECOMMENDATION

**Law schools should take a three-pronged approach to broadening access to a legal education:**

- 1. Law schools should have more flexible admissions processes that consider and weigh a broader range of qualifying criteria beyond grade point averages and standardized admission test scores.**
- 2. Law schools should build relationships with their communities to foster pipelines to the legal profession for students who might not otherwise consider law school.**
- 3. Law Schools should take greater steps to foster success of a diverse law student body.**

## **SYNOPSIS OF DISCUSSION: DETAILING THE RECOMMENDATION**

Initially, the Work Group panelists and participants agreed that, for purposes of this discussion, “diversity” is intended to be construed broadly to include race, gender, age, class, gender identity, sexual orientation, disability and other differences that affect the interactions with legal profession and law school community. The panelists shared their personal stories to illustrate how gaining access to a legal education can shape a successful career in law and cultivate leaders for non-profit organizations.

- 1. Law schools should actively engage in their community for the purpose of building pipelines to the legal profession as soon as possible for those who might not otherwise have the opportunity to pursue, or even the option of considering, a legal education.**

Law schools should deeply engage with their community. From the outset, law schools can expand their mission statements to include a commitment to the communities where they are located. The Work Group agreed that expanding the law school mission to include cultivation of relationships with local communities provides pedagogical benefits in addition to enhancing access. These relationships will create opportunities for students to practice lawyering skills through, for example, public speaking or thinking strategically for a client. The local community provides many interdisciplinary internship opportunities for law students. Engagement with the community will also provide law school faculty with options for research on community issues. The law school’s local community provides a field for research and targeted action toward narrowing the justice gap.

Law schools should know their community partners well. Law schools should be guided on how to pick a community-based organization with which to work. The community-based organization (CBO) should be a significant shareholder in the community and the relationship should be mutually beneficial. For example, supervision opportunities for staff can be provided for the oversight of law student work. In addition, the CBO’s mission should be somewhat aligned with the law school mission.

Law schools should work with local community-based organizations to share what “law” means to the community, including its children, parents and local organizations. This relationship could address both civil and criminal issues. This type of working relationship will inevitably lead to more clinical opportunities in the community and educational paths for local middle school, high school and undergraduate students to proceed directly to law school. Here are some specific suggestions about where to start:

- Plan a law day program;
- Adopt a school;
- Create a mentoring opportunities; or
- Develop a local pipeline.

Formal successful pipeline programs, such as Legal Outreach, NYSBA’s Youth Outreach programs, and the Ronald H. Brown Center for Equal Rights and Economic Development, furnish good models for involving community, law school and the legal profession. Funding, of course, will make a difference but funding is not expected solely from the law school. The legal community holds opportunities for funding these types of partnerships, including law firms, local, state and federal government and private foundations. These partnerships could provide interdisciplinary opportunities which such individuals and organizations may want to fund. The law school and the local community could potentially benefit from funding obtained for stipends for summer law students.

## **2. The admissions process should be more holistic, and create options to gain access to a legal education beyond the Grade Point Average (GPA) and LSAT scores.**

There was strong sentiment to encourage law schools to continue to look beyond the GPA and LSAT, especially to reconsider numeric cut-offs. All schools might want to consider offering applicants the option of proceeding without consideration of their scores. Law schools might also add questions that relate to access to a legal education. For example, is the applicant a first generation college student? Did the student face great adversity growing up? What is the educational background of other members of the prospective student's family?

It was suggested that law schools offer the option of providing diversity statements as part of their admissions process. Some schools already ask specifically about the items suggested above. Law schools should also assure that their admissions committee is itself diverse.

Law schools should provide interview opportunities and assure that such opportunities are broadly available, even to those who cannot travel to the location of the law school. It was suggested that utilizing Skype or other methods of providing videoconference interviews be available for all students.

Colleges and law schools should partner with one another to direct entry from particular colleges into a local law school. Developing relationships with appropriate feeder schools, such as HBCUs<sup>10</sup>, public colleges and universities, where more diverse applicants attend college, will broaden access to a legal education. Utilizing alumni and other resources to create diversity scholarships to law schools will also assist in overcoming some of the economic burdens. Efforts to ensure that pipeline programs have adequate information to prepare participants for the economic realities of attending law school should be undertaken.

Other suggestions to ensure admissions processes reach a diverse range of potential students include having law schools assist in increasing access to paid bar preparation courses via scholarships or other economic supports to diverse law students, targeting older students, and preserving evening programs. Recruiting from paralegals and non-lawyers involved in the delivery of justice could ensure bringing in applicants who will increase access to justice.

## **3. Law schools can support diversity once students are enrolled.**

Once admitted, law schools should work to support diverse students. Law schools should prioritize resources for the study of race equity issues in society, in law school and in the legal profession. In this way, law schools can support and train students to become future agents of social change. Academic options, such as learning labs devoted to access-to-justice issues provide law students with opportunities to support their passion for justice and have the dual benefit of creating change agents. To this end, the Work Group recognized that the Pro Bono Scholars Program serves as an invaluable tool for developing access-to-justice leaders and encourages law schools to continue to support the Program.

Here are some examples of how law schools can support a diverse student body:

- Law schools should provide earlier opportunities for clinical and access-to-justice experiences.
- The core curriculum should include a mandatory access-to-justice seminar in the first year.
- Law schools should consider adopting a mandatory pro bono requirement, signaling the importance of pro bono even beyond the 50-hour bar admission rule.
- The career development offices of law schools should improve career placement for public interest jobs, including paid internships and attorney positions.

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<sup>10</sup> Historically Black Colleges and Universities (HBCU) are defined as institutions established prior to 1964.

- Law schools should provide support for diverse student groups, such as affinity groups.
- Alumni and law school resources should be further utilized for the creation of scholarships and placement of diverse students into paid internships.

## **CONCLUSION**

The Work Group generated a list of options that law schools have for promoting increased access to justice.<sup>11</sup> The session made it clear that law schools have a wealth of options to support diverse law students in gaining access to a legal education and the profession.

## **2. INFUSING DIVERSITY ISSUES AND ACCESS TO JUSTICE INTO THE LAW SCHOOL CURRICULUM: UNDERSTANDING THE SKILLS, PROFESSIONAL VALUES AND CULTURAL COMPETENCIES**

*Facilitator:* **Connie Mayer**

*Associate Dean for Academic Affairs*

*Raymond and Ella Smith Distinguished Professor of Law, Albany Law School*

*Panelists:*

**Kim Diana Connolly**

*Professor of Law*

*Vice Dean for Legal Skills, Director, Clinical Legal Education*

*SUNY Buffalo Law School*

**Alexander D. Forger**

*President, Legal Services Corporation (1994-1997)*

**Jennifer A. Gundlach**

*Senior Associate Dean for Experiential Education, Clinical Professor of Law*

*Maurice A. Deane School of Law, Hofstra University*

**Sarah Rogerson**

*Associate Professor of Law*

*Director, Law Clinic & Justice Center*

*Director, Immigration Law Clinic*

*Albany Law School*

## **OVERVIEW**

The purpose of this Work Group was to explore how to draft and assess learning outcomes related to access-to-justice issues. This topic has recently become very important as law schools work to comply with two new rules: (1) American Bar Association (ABA) Standard 302<sup>12</sup> and (2) Section 520.18 of the Rules of

<sup>11</sup> See Exhibit 2 annexed to this Report.

<sup>12</sup> ABA Standard 302 provides, in relevant part, that "A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (e) Knowledge and understanding of the substantive and procedural law;
- (f) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
- (g) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (h) Other professional skills needed for competent and ethical participation as a member of the legal profession."

the Court of Appeals for the Admission of Attorneys.<sup>13</sup> These two rules place responsibility on law schools to ensure that law students have basic competency in the skills and values needed to practice law upon graduation.

ABA Standard 302 requires law schools to establish learning outcomes that, at a minimum, include competency in the knowledge and understanding of the law, as well as proper professional and ethical responsibilities needed for competent law practice. Section 520.18 of the Rules of the Court of Appeals for the Admission of Attorneys builds on this new ABA requirement. Applicants to the New York bar will now have to demonstrate that they possess the skills and values necessary to provide effective and ethical representation. One of the ways that applicants can demonstrate competence is through Pathway No. 1, law school certification. Pathway No. 1 allows an applicant for admission to the New York bar to submit a certification from their law school confirming that the law school has developed a plan identifying learning outcomes pursuant to American Bar Association Standard 302 and that the applicant has acquired sufficient competency in those skills and values set out in the learning outcomes.

These new rules offer an opportunity for law schools to make a commitment to teaching about access to justice. While discussions have been ongoing for years about how to teach access to justice in the law school curriculum,<sup>14</sup> these rules provide a concrete way to establish a learning outcome, ensure that it is taught in the required curriculum, and assess students' competency with respect to such outcomes.

Towards this goal, this Work Group explored how to draft and assess learning outcomes related to ensuring that students acquire an understanding of the gap in our justice system and recognize the responsibility of lawyers to ensure all individuals have equal access to the privileges of our justice system. The group discussed concrete examples of learning outcomes related to access to justice, how these values can be taught through the required curriculum, and how the sufficiency of competency may be assessed in order to meet the requirements of the new ABA Standards and Court of Appeals rules.

## **RECOMMENDATION**

**All law schools should develop at least one institutional learning outcome for students related to access to justice in furtherance of ABA Standards and Court of Appeals rules.**

1. To ensure students have the opportunity to meet that learning outcome, law schools should identify courses in the required curriculum where this learning outcome is or should be addressed.
2. Once the courses have been identified, course-level learning outcomes related to access to justice should be specifically set out in the faculty member's syllabus.
3. Develop and implement assessment tools that will evaluate whether students have achieved the outcome.

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13 NY Court of Appeals Rule 520.18, Skills Competency Requirement for Admission, states that "Every applicant for admission to practice...shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services in this State. An applicant may satisfy this requirement by submitting proof of compliance with one of [five pathways]" available at <http://www.nycourts.gov/ctapps/520rules10.htm#B18>

14 See 2013 Report from the Law School Conference, Appendix 15 to the 2013 Annual Report to the Chief Judge accessible at <http://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf> and the 2014 Report from the Law School Conference at [http://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report\\_Appendices\\_Vol%202.pdf](http://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report_Appendices_Vol%202.pdf)

## SYNOPSIS OF DISCUSSION

Alexander Forger introduced the topic through a discussion of the history of civil legal services and the unmet need that still exists in New York. Professor Jennifer Gundlach then discussed how to design learning outcomes and gave some concrete examples of learning outcomes related to access to justice. The Work Group participants divided into small groups to draft examples of learning outcomes. In the afternoon session, Hon. Jenny Rivera discussed the new Court of Appeals rules related to learning outcomes and responded to questions. Professors Kim Connolly and Sarah Rogerson discussed assessment of learning outcomes. The Work Group brainstormed ways to assess whether students have gained knowledge and understanding of access-to-justice issues that would meet the goals set out in the learning outcome.

Mr. Forger's overview of the history and development of civil legal services underscored the need for law students to understand their obligation to work toward access to justice for all in order to narrow the justice gap. Studies dating back decades and continuing through the present show that there is an immense unmet need for civil legal services for low-income individuals and families.<sup>15</sup>

Professor Connie Mayer, the session moderator, next described the new ABA and Court of Appeals rules requiring law schools to establish learning outcomes and ensure that law students meet the basic competencies set out in those outcomes. To ensure that law students acquire an understanding of the gap in our justice system and recognize the responsibility of lawyers to ensure all individuals have equal access to the privileges of our justice system, law schools should seize the opportunity provided by the new rules to establish learning outcomes directly related to access to justice. Schools should also develop assessment methods that will ensure that students achieve the learning outcome articulated by the school. If a law school establishes a learning outcome, the skills and values targeted by that outcome must be intentionally taught and assessed by the law school. The focus of the balance of the session was to brainstorm how to draft a learning outcome related to access to justice that can be taught, and how to assess competency of that desired outcome.

Professor Gundlach began our discussion of learning outcomes by providing examples of learning outcomes adopted by other law schools.<sup>16</sup> Learning outcomes allow a school to articulate the learning goals each school would like students to achieve. The first key issue is to identify what outcome or goal is desired. Access to justice is very broad and can encompass outcomes related to gaining knowledge/ understanding of the justice gap, demonstrating an understanding of diversity issues, or focusing on the knowledge, skills and values needed to perform competent access-to-justice work. The second key issue is how to draft or frame the outcome so it can be assessed. Carefully drafting learning outcomes will allow schools to plan the assessments needed to determine if the outcome has been met. This, in turn, will help schools identify the courses or other activities that need to be put in place to ensure students achieve such outcomes. Learning outcomes should be specific and measurable.

### **Drafting Learning Outcomes**

Smaller groups of four or five participants were asked to try to formulate their own learning outcomes related to access-to-justice issues, as well as discuss challenges inherent in developing learning outcomes, identifying various possible outcomes, and attempting to draft actual language for such learning outcomes.

Participants identified several challenges to creating and defining learning outcomes related to access to justice. Many ideas surrounding access to justice are somewhat intangible. Translating those "big ideas" to concrete learning outcomes is sometimes difficult to do. Other challenges mentioned were prioritizing

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<sup>15</sup> See generally, Johnson Jr, E., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States* (2013); Johnson, Jr. E., "Justice for America's Poor in the Year 2020: Some Possibilities Based on Experience Here and Abroad," 58 *DePaul Law Review* 393 (Winter 2009); National Equal Justice Library and Archives at <https://www.law.georgetown.edu/library/collections/nejl/>.

<sup>16</sup> See Exhibit 3 annexed to this Report.

and deciding which outcomes and how many, making word choice as deep as possible but still specific and measurable, and the problem of mandating learning outcomes in a law school world in which academic freedom is valued and guarded.

Participants grappled with where and how to begin and several suggestions were made about what the starting point should be. Participants recommended that we look to other professions or disciplines to borrow from work already done regarding learning outcomes. All agreed that you have to start at the end: Identify what it is we want lawyers to ultimately do and think about what we are trying to accomplish.

**The small groups suggested the following as possible access-to-justice learning outcomes for law graduates:**

- Demonstrate an understanding of how implicit bias impacts a lawyer's ability to analyze legal problems;
- Demonstrate an understanding about the lives and challenges of indigent clients;
- Demonstrate an awareness of disparities between individuals;
- Demonstrate multicultural competencies;
- Demonstrate an understanding of the structural disparities of race, class, gender, etc.;
- Demonstrate an understanding of their responsibilities when an unrepresented person is on the other side;
- Gain a substantive understanding of how and why the court system does not work for all litigants;
- Demonstrate an understanding of the lawyer's professional responsibility to those who are not represented and make a commitment to providing representation; and
- Recognize issues facing vulnerable populations in society and the tools and strategies available to lawyers to affect change.

**Court of Appeals Rule 520.18 for Admission of Attorneys**

Judge Rivera described the purpose of the new Court of Appeals rules on admission to ensure that law school graduates are prepared to practice and have basic competencies and professional values. The old model of training on the job is no longer the reality and graduates must be prepared to immediately begin representing clients. The law schools' submission to the Court of Appeals under the new rules should be an integrative process with the ABA accreditation requirements and is intended to build on new ABA Standard 302. As is true of the ABA Standards, law schools are free to identify those skills and professional values they believe are appropriate given each school's unique mission.

Following Judge Rivera's remarks, Professors Connolly and Rogerson discussed assessment. Once a learning outcome is in place, law schools need to create assessment tools that can measure whether the students have achieved the outcome. Professor Connolly discussed some of the challenges with regard to assessment. ABA Standard 314 requires that law schools utilize formative and summative assessment across the curriculum. Because of academic freedom and entrenched norms, some faculty are resistant to changing the way they assess student work. Other challenges relate to methods used to teach access-to-justice issues. The type of assessment and tools used to assess student achievement depend on the method of teaching issues surrounding access to justice.

Professor Connolly said that most universities have a central office that can assist with drafting learning outcomes and creating methods of assessment because undergraduate and other graduate programs have had to use learning outcomes for accreditation purposes for many years. She recommended that law schools seek out those resources.



Professor Rogerson discussed ways to take an interdisciplinary approach to assessment and also suggested that a wider community can be engaged in assessment. For example, in the clinic, faculty could create an assessment tool that would allow feedback from clients or other community partners with which a student has worked to determine whether the student has achieved the learning outcome.

### **Methods of Assessment**

As stated above, the type of assessment tools to be used will depend on how issues surrounding access to justice are taught. Participants echo what previous conference work groups have recommended in acknowledging the various ways that access to justice can be incorporated throughout the curriculum: a free-standing course in the first year or in the upper division that teaches what access to justice means, including the impact of the law on poor clients and the roles of access-to-justice lawyers; a specific module offered through a Legal Ethics course addressing the unmet need for legal representation; participation in a clinical course in which students get actual experience working with low-income clients.

#### **Participants suggested the following methods of assessing whether students met the learning outcome of demonstrating an understanding of access-to-justice issues:**

- Essay and/or group project / presentation on what it means to have a system of justice;
- Collaborative projects in which students discuss and prepare a class presentation on a particular aspect of access to justice (extent of the unmet legal need, duty toward an unrepresented client, impact of the lack of legal representation, changes in the law that would promote access to justice.);
- Reflective paper/discussion at end of course/module in which students reflect on how their perspective on access to justice has changed;
- Essay/paper/discussion in which students identify access to justice issues faced by litigants;
- Students participate in an implicit bias test to begin conversation, reflection on results;
- In a clinic course, discussion of impressions of client before and after representation;
- Court observation followed by reflection (paper or discussion) on experience and how it impacted student's personal code of conduct; and,
- Interview clients who have had negative experiences with lawyers and write a paper or discuss the reasons for the negative experience and how that impacts the student's own professional identity.

### **CONCLUSION**

This Work Group discussion reinforced what previous conference work groups addressing law school curriculum have recommended. Schools should develop learning outcomes for students that identify the knowledge, skills and values needed to understand access-to-justice issues and encourage the commitment to performing access-to-justice work in school and after graduation. Creating these learning outcomes is now required and schools should seize the opportunity presented by this mandate to include an access to justice learning outcome as an institutional goal. Once a learning outcome is articulated, the school must intentionally teach it and create a way to assess it to ensure students have met the desired outcome. The break-out discussion groups were able to articulate several learning outcomes and methods for assessment that would be relatively easy for law schools to implement.

### 3. NON-LAWYERS WORKING TO HELP NARROW THE JUSTICE GAP AND THE ROLE OF LAW SCHOOLS AND LAW STUDENTS

*Facilitator: Thomas Maligno*

*Executive Director, Public Advocacy Center; Director of Public Interest; Touro Law Center*

*Panelists:*

**Natalia Faras**

*Founder and Manager, Project Totem, Albany Law Clinic & Justice Center  
Albany Law School, J.D. Candidate 2017*

**Ignacio Jaureguilorda**

*Director, Legal Hand*

**Roger J. Maldonado**

*Co-Chair, Committee on Non-Lawyers and the Justice Gap;  
Partner, Balber Pickard Maldonado & Van Der Tuin, PC*

**Denise Miranda**

*Managing Director, Safety Net Project  
Urban Justice Center*

**Karin Anderson Ponzer**

*Executive Director, Pace Community Law Practice*

#### OVERVIEW

To fully realize equal justice, access-to-justice work must include trained, competent non-lawyers in efforts to serve marginalized individuals for whom access is abridged due to race, gender, disability, language, immigration status, geographic issues or other barriers. Law schools can play an important role in developing non-lawyers to serve low-income people, as well as the programs in which non-lawyers can work with underserved and underrepresented communities. Moving beyond the discussions of the 2014 and 2015 Work Group sessions on the need for non-lawyers to be part of the legal services delivery system, this year's session examined the effective use of non-lawyers in the New York State courts, in neighborhood storefront centers, in community organizations, and in law school clinics and practice settings, to enhance access to justice for unrepresented and self-represented individuals.

#### RECOMMENDATIONS

1. Law Schools should recognize the value of non-lawyer assistance in the legal services delivery system given the salutary impact non-lawyers can have in enabling access to justice:
  - a. Encourage law schools to identify ways for law students to partner with non-attorneys, e.g. social workers, financial counselors, housing advocates, and to foster partnerships between student-run projects and non-lawyer programs.
  - b. Encourage law schools to recruit students who demonstrate an interest in law, for example, by working with community programs like Legal Hand.
  - c. Encourage law schools to consider creating training programs for non-lawyers; such as the language access project like Project Totem at Albany.

2. Based on the success of the Navigator Program piloted in select housing and consumer credit courts, law schools should be encouraged to support the proposed OCA bill to amend the unauthorized practice of law statute (Judiciary Law section 478) to expand the availability of civil legal assistance by trained and supervised non-lawyers (to be known as “Court Advocates”) for low-income litigants.
3. A review of the 50-hour pro bono bar admission rule (Court of Appeals Rule 520.16) should be undertaken to assess its impact and possible amendment to include appropriately supervised law student legal work with non-lawyer programs as qualifying pro bono work.

## **SYNOPSIS OF DISCUSSION**

Moderated by Thomas Maligno, Executive Director of the Public Advocacy Center and Director of Public Interest at Touro Law Center, the panel discussion was designed to spotlight how non-lawyers are currently working in the legal services delivery system. The session began with an overview of the court-based Navigator Program, described by Roger J. Maldonado, Co-Chair of the Committee on Non-Lawyers and the Justice Gap, and of the newly established Legal Hand neighborhood storefront centers outlined by the director, Ignacio Jaureguilorda.

### **Navigator Pilots**

The Committee on Non-Lawyers and the Justice Gap recommended creation of the Navigator Program to help respond to the crisis of the unrepresented in our state courts by allowing trained non-lawyers, “Navigators,” to lend free assistance in connection with specifically delineated tasks in select housing and consumer debtor courts.<sup>17</sup>

Two years after the pilot was initiated, there is consensus that the Navigator model, while not a substitute for representation by a lawyer, offers a level of service that can “help to promote basic fairness for people otherwise unable to receive legal assistance in matters of significant consequence to their lives.”<sup>18</sup> In numerous instances, Navigators have identified issues and affirmative defenses that unrepresented individuals may have been unaware even existed. Likewise, the assistance of a trained non-lawyer in completing court forms improves outcomes for the litigants and promotes the fair and efficient administration of justice.

The housing court navigator programs were piloted in Brooklyn under the auspices of Housing Court Answers, University Settlement House and the Unified Court System’s Access to Justice (A2J) Program. One basic, yet critical, element of assistance provided by the non-lawyer/navigator is offering explanations of court processes and forms. All three programs work collaboratively, to ensure the litigant receives the most appropriate assistance, including social services if that is in order. The assistance is limited in scope, but in some cases, the navigator may work with a tenant until the matter is finally resolved. The A2J Navigator Program has since expanded to housing parts in the Bronx, Queens and Manhattan. The consumer debt navigator program operates in Bronx County’s City Civil Court under the auspices of the court system’s A2J Program.

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<sup>17</sup> Navigators may engage in preliminary discussions with litigants to explain all facets of the court process; review and explain relevance of papers received by litigants; provide information to litigants about appropriate or available court services (including interpreters); provide assistance to litigants in filling out court-approved DIY forms and help in identifying additional resources available on the Internet; accompany client to court, including giving notes or reminders to litigants where and when necessary; if asked a direct factual question by the judge respond by providing factual statements; take notes during any conference or hearing to discuss with litigants afterwards to ensure litigants are clear about what has been said or decided and what the litigants must do to comply with any directions they may have been given; and some Navigators in Housing Court, may provide more in-depth service to help provide needed social services, including benefits to cover rent arrears where available. (See Administrative Order AO-42/14 [adopted Feb. 10, 2014]).

<sup>18</sup> New York State Court Navigator Program, Committee on Non Lawyers and the Justice Gap, Navigator Snapshot Report (Dec. 2014) (on file with the Permanent Commission).

Draft legislation has been developed by the Office of Court Administration that formalizes an expanded role for non-lawyers, to be known as “Court Advocates,” who would receive targeted training and work under the supervision by a lawyer. It was suggested that one way to increase the number of persons assisted in our courts is to further expand the role of non-lawyers in the legal services delivery spectrum.

### **Legal Hand neighborhood storefront centers**

Legal Hand is a new initiative dedicated to improving access to justice for low-income New Yorkers. Legal Hand neighborhood storefront centers have trained community volunteers who provide free legal information, assistance, and referrals to help members of low-income communities resolve issues that affect their lives in areas like housing, family, divorce, domestic violence, immigration, and a variety of public assistance benefits, and try to prevent them from turning into legal actions. This model, developed by Commission Chair Helaine Barnett, in collaboration with former Chief Judge Jonathan Lippman, was launched in 2015 with a \$1million anonymous grant. Three Legal Hand storefront walk-in centers are operating in low-income neighborhoods, which are staffed by trained neighborhood volunteers who are not lawyers. By recruiting, training and mentoring community residents, Legal Hand volunteers are uniquely positioned to identify neighborhood resources to assist individuals with matters related to their housing, public assistance benefits, employment, immigration or domestic situations. Volunteers are requested to commit to a period of service, and data is being collected to assess the services provided. As of the date of the Conference, over 1,200 visitors were served in the two Legal Hand centers opened by former Chief Judge Lippman in Crown Heights, Brooklyn and Jamaica, Queens. The number of people who will be served is expected to continually increase and a third Legal Hand center is scheduled to be officially opened by Chief Judge Janet DiFiore in Brownsville, Brooklyn in June 2016. Legal Hand provides access to justice by offering services and information that can help identify whether there is a legal issue and, in this regard, can be an effective preventative tool.

### **Responding to the Need**

Following the overview, there was discussion regarding the fact that it is frequently the case that a person who meets with a legal services provider has a host of issues that legal services cannot address. For example, the housing issue may actually be finding affordable housing. In this regard, one legal services provider has added resources, including social workers and financial planners, to direct an affordable housing search. The participants agreed that a team of professionals is a good model. While there is a pressing need for lawyers, models that provide information and referrals can be very useful. Absent the lawyer-client relationship, there is no confidentiality and the importance of training volunteers as to the nature and scope of appropriate assistance is critical.

Panelist Denise Miranda, Managing Director of the Safety Net Project at the Urban Justice Center, reported that this project employs a large number of trained non-attorneys, who engage in public advocacy, as well as offer legal information and assistance to clients who have issues related to various public assistance benefits and basic human needs. Ms. Miranda indicated the importance of (1) shifting the culture between lawyers and non-lawyers given the impact non-lawyers have in providing access to justice for underserved people, and (2) partnering with community organizations and law schools to maximize the scope of services.

Karin Anderson Ponzer, Executive Director of the Pace Community Law Practice (PCLP), remarked that there are many opportunities to have law schools play a role in cultivating non-lawyers. Ms. Ponzer pointed to several factors, such as declining law school enrollments and post-graduate opportunities for law students, and the fact that many people who do not qualify for free legal assistance cannot afford a lawyer as strong reasons to expand the community-based lawyering practiced by the PCLP. PCLP uses university office space, computer hardware and software and a wireless platform for its integrated model of service. By partnering with community-based organizations that do not provide legal services, the PCLP provides legal fellows, who are recent law graduates, and current law students, to deliver legal

services and help train community groups on handling a range of issues. In some instances, the PCLP Fellows and law students engage directly with the community by joining mobile offices to offer services. The PCLP is an economical model that has a tremendous impact on the community having served over 1,800 people since it launched in 2012.

Working with undergraduate students, Albany Law student Natalia Faras, founded and manages Project Totem at Albany Law Clinic & Justice Center, to respond to the barriers non-English speakers in the community encounter when confronted with legal issues. Ms. Faras recruited bilingual undergraduate students, who received academic and community service credit, to volunteer to translate documents and serve as interpreters for clients of Albany Law School's clinics. The students received training on ethics, confidentiality and the nature of legal work to familiarize them with the type of documents and matters the clinics' clients may present. The Project serves as a pipeline for undergraduates interested in law as they have the opportunity to interact with law students, professors and experience the law school environment. Mention was made to consider how to involve law students in this Project, including qualifying as eligible work for the 50-hour pro bono bar admission rule.

## **CONCLUDING DISCUSSION**

The Work Group discussion turned to how law schools can establish programs to work with non-lawyers, particularly in a model like Legal Hand, and train law students to understand how to partner with non-lawyer programs. Collaborations between community organizations, legal services providers and law schools to integrate "holistic service delivery systems" and develop students' skills are strongly recommended. Indeed, a model such as Legal Hand can offer very valuable experiences for law students, graduate and undergraduate students to cultivate advocates, not only lawyers. Joint degree programs that combine law and social work, partnerships with medical providers and integrating technological tools are examples of how to use the skills and knowledge of non-lawyers to enhance access to justice for individuals facing barriers. The group noted the importance of "marketing" the exposure students receive by community volunteering when it falls outside the scope of academic or pro bono credit.

## 4. NEW MODELS FOR COST EFFECTIVE LEGAL SERVICE DELIVERY TO ENHANCE ACCESS TO JUSTICE

*Facilitator: Jack Graves*

*Professor of Law & Director of Digital Legal Education  
Touro Law Center*

*Panelists:*

**Benjamin H. Barton** *(via Zoom from Tennessee)*

*Helen and Charles Lockett Distinguished Professor of Law  
University of Tennessee College of Law*

**Lynn Lu**

*Clinical Law Professor  
Managing Attorney, Court Square Law Project  
CUNY School of Law*

**Leah Margulies**

*Senior Advisor, Law Help NY  
Pro Bono Net*

### OVERVIEW

The ABA established the Commission on the Future of Legal Services, which took on a specific charge under then ABA President William C. Hubbard, to develop new and more effective models for legal service delivery to meet the needs of the underserved. Consistent with the mission of this ABA Commission, the Work Group explored potential new models for cost effective legal service delivery to enhance access to justice in New York.

### RECOMMENDATIONS

1. Reduce the cost of legal service “intake” to the greatest extent possible to allow greater allocation of legal service resources to the actual provision of services—ideally though a single intake system.
2. Early in the intake process, a determination of whether the legal problem in question requires direct consultation with an individual lawyer, or whether it might be effectively solved by other lower-cost delivery means, using technology and/or non-lawyer human assistance, is critical to reducing costs and facilitate quick and appropriate access.
3. The current regulatory structure should be examined and evaluated for ways in which it might better accommodate low-cost delivery of legal services by licensed legal professionals to individuals and small businesses of modest means, including, by way of example:
  - a. Greater opportunities for legal service delivery on a nationally scalable model;
  - b. Greater opportunities for legal service delivery by limited license service providers; and
  - c. Greater opportunities to employ technology in bringing down the cost of legal services.
4. Law schools should better train students on the economics and various forms of cost-effective legal service delivery. Specifically, schools should teach students how uniform processes used

to address common legal issues, together with technology, can enable a legal service provider to deliver more cost-effective legal services to individuals and small businesses of modest means.

5. Law schools should do more to facilitate new and innovative means for the delivery of pro-bono and low-bono/low cost legal services by law students and recent graduates.

## **SYNOPSIS OF DISCUSSION: DETAILING THE RECOMMENDATIONS**

The Work Group sought to determine how to balance the value of one-on-one counseling by a lawyer with the inability of most Americans to pay for counseling delivered in this manner. In doing so, it took a “triage” approach, seeking quickly to identify circumstances that might tip this balance in either direction.

The group sought to distinguish situations involving significant power or knowledge imbalances from those involving simple, non-contentious transactional advice. In the former, direct communication with an actual lawyer is more important, while the latter might be serviced to a greater degree through technology. However, even in the latter case, the group noted the benefits of knowledgeable assistance, even if in the form of a non-lawyer.

### **Intake Process**

The dialogue regarding the triage process dovetailed nicely with the break-out group’s discussion on the intake process as a means of increasing the cost-effectiveness of the ultimate legal service delivery. The group also noted that much of this intake triage could be performed by non-lawyers and/or technology. The group did, however, note concern over challenges in measuring outcomes when employing automated legal services.

Another break-out group considered how government and non-profit entities might do more with available resources, and how the private, “for profit” sector might also help to close the justice gap. This group focused primarily on the intake process as the key, ideally relying on a single intake system.

In addressing the intake process, the group noted that one of the best ways to improve the cost-effectiveness of legal service delivery is to get the potential client to the right source of legal expertise as quickly and efficiently as possible. The group also acknowledged the increasing effectiveness of technology in assisting with or even performing in large part this intake process.

By improving the intake process, the government or non-profit entity can better focus its limited resources on actual legal service provision. Private practitioners are more likely to be able to deliver cost-effective services at a profit if the intake service is effective in matching them up with clients for which their specific expertise is best suited.

The group also talked in some detail about the nature of scalable services and limited-scope representation, as well as various delivery settings for such services. The group recognized the importance of both pro-bono and low-cost legal service delivery in closing the access-to-justice gap, and suggested collaboration between courts, practitioners, and law schools in providing both.

### **Regulatory Issues**

This break-out group began by discussing the regulatory barriers to low-cost legal service delivery by lawyers. Participants noted the difference between the relative lack of regulation relating to free services, when compared to the standard application of the regulatory structure to low-cost legal services. In effect, the licensed legal community is at a significant disadvantage when attempting to compete with non-lawyer, low-cost legal service providers, like LegalZoom. If we believe that licensed

lawyers are the most qualified to deliver low-cost legal services to individuals and small businesses of modest means, then we need to modify the regulatory structure to better allow lawyers to compete effectively in this market.

In further examining this issue, the group considered unauthorized practice of law (UPL) definitions (which vary considerably from state-to-state) and the degree to which these UPL rules serve to protect consumers of legal services. The group also discussed the idea of multi-level licensing, as found in the medical profession, as well as multi-jurisdictional, and even national, law practice, as opportunities for lower cost delivery of certain legal services. Finally, the group examined a number of specific technology applications allowing for potentially significant reductions in the cost of certain legal services, but potentially affected by the current regulatory scheme.

## **CONCLUDING DISCUSSION**

The group concluded by discussing how we might better prepare today's law student to address and potentially find answers to these challenges upon graduation and successful admission to the bar. The discussion also addressed how existing law schools might provide different levels of legal training to facilitate any multi-level approach to licensure.

## **AFTERNOON PLENARY SESSION**

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Upon conclusion of afternoon work group sessions, the participants reconvened for the closing plenary session. Dean Diller introduced Laren Spierer, Director of Pro Bono Programs at Columbia Law School, who previewed one of the chapters for the online Handbook of Best Practices for Supervising Law Student Pro Bono Work, conceived and developed during the 2014 and 2015 Conference Work Groups on Supervision. The Handbook is a continuing project of the Statewide Law School Access to Council, which will be published online as a resource tool for individuals and organizations engaged in the supervision of law student pro bono work.

Dean Diller recognized the facilitators of the four conference work groups, each of whom delivered brief reports outlining the recommendations detailed herein, drawing his praise and that of the audience. He commended the facilitators, the plenary and work group panelists, members of the law school planning committee and all the participants for the inspired discussions and their proposals to further efforts to expand access to justice and law schools' contributions. Dean Diller highlighted the value of the annual law school conference for its educational function, collaborative spirit and the significant contribution to the Commission in its development of recommendations directed to efforts by New York's law schools and law students to expand access to justice.

Dean Diller urged participants to harness the energy and talent of New York's law students, to provide guidance and mentoring, and maximize this time of increased opportunities and resources for pro bono legal work aimed at helping our most vulnerable citizens. Law schools are singularly equipped to cultivate lawyers and leaders who are versed and skilled to be responsive to individuals who, confronted with legal matters, face societal barriers due to race, poverty, gender identity, religion, English fluency or any physical or mental impairment—and their intersections—impair their access to justice.

Ms. Barnett closed the conference with a message of appreciation and a request for feedback both on the content and structure of the conference to inform efforts in planning for next year.



# EXHIBIT 1

## FIFTH ANNUAL LAW SCHOOL ACCESS TO JUSTICE CONFERENCE PROGRAM

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE



# FIFTH ANNUAL LAW SCHOOL CONFERENCE

**ACCESS TO JUSTICE: THE ROLE  
OF NEW YORK'S LAW SCHOOLS IN  
HELPING MEET THE ESSENTIAL  
CIVIL LEGAL NEEDS OF LOW-  
INCOME NEW YORKERS**

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Convened by the New York State Permanent Commission on  
Access to Justice at New York University School of Law  
May 17, 2016

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**HELAINÉ M. BARNETT**  
Chair, New York State Permanent Commission on Access to Justice



FIFTH ANNUAL LAW SCHOOL

# ACCESS TO JUSTICE CONFERENCE

THE ROLE OF NEW YORK'S LAW SCHOOLS IN HELPING MEET THE ESSENTIAL CIVIL LEGAL NEEDS OF LOW-INCOME NEW YORKERS

**9:00 - 9:30 am Registration, Check-In & Light Refreshments**

**Vanderbilt Hall**

**9:30 - 10:00 am Welcome and Introduction**

**Tishman Auditorium**

**Helaine M. Barnett**, Chair, New York State Permanent Commission on Access to Justice; President, Legal Services Corporation (2004-2009)

**Trevor W. Morrison**, Dean and Eric M. and Laurie B. Roth Professor of Law, New York University School of Law

**Opening Remarks** **Hon. Janet DiFiore**, Chief Judge of the State of New York

**10:00 am - 12:00 pm Morning Plenary Session**

**Tishman Auditorium**

**Race, Poverty, Identity: Diversity Issues and Access to Civil Justice**

**Keynote Speaker** **Charles J. Ogletree, Jr.**, Jesse Climenko Professor of Law; Director, Charles Hamilton Houston Institute for Race & Justice, Harvard Law School

**Panel Discussion** Moderated by **Professor Ogletree**

The panel discussion will explore how New York's law schools can and should contribute to improved access to equal justice for New Yorkers who face barriers due to race, poverty, identity and their intersections. Intended to provide inspiration and preparation for the Work Group sessions that follow, the Panel will consider (a) how law schools can encourage and educate their students to become lawyers who help close, or at least narrow, the justice gap; (b) whether there is a relationship between who graduates from law school and what needs are served; (c) how to best encourage and empower students from marginalized communities to enter and succeed in law school; and (d) whether schools should also increase access to justice by training other legal professionals, in addition to lawyers.

**Panelists** **Deborah N. Archer**, Dean of Diversity & Inclusion; Professor of Law; Co-Director, Impact Center for Public Interest Law; Director, Racial Justice Project, New York Law School

**Jennifer Ching**, Project Director, Queens Legal Services, Legal Services NYC

**Hon. Fern Fisher**, Director, New York State Courts Access to Justice Program; Deputy Chief Administrative Judge for New York City Courts

**Suzanne B. Goldberg**, Executive Vice President for University Life; Herbert and Doris Wechsler Clinical Professor of Law; Director, Center for Gender and Sexuality Law, Columbia Law School

**Maya Wiley**, Counsel to Mayor Bill de Blasio, City of New York

**12:15 - 1:10 pm Work Group Sessions: Part One****Four Concurrent Sessions**

Participants will hear brief panel presentations about the Work Group themes and goals during Part One of the Work Group Session. After the lunch break, participants will return to their Work Groups for Part Two of the Work Group Session. Part Two will feature targeted discussions to generate ideas for future action and recommendations, to present to the Permanent Commission on Access to Justice for consideration and possible inclusion in its Annual Report to the Chief Judge, on law school efforts to help close the justice gap.

**A. Opening the Doors: Access to Law School as an Access-to-Justice Issue Faculty Library**

The Work Group Session will address how access to law school affects access to civil justice; does who becomes a lawyer affect who receives legal services? Law Schools have a variety of approaches to addressing issues of race, identity and diversity that can limit access to a legal education and the legal profession. The Work Group will explore law school efforts to nurture pipelines to legal educational opportunities and discuss the effect of economic considerations, e.g. law school tuition, financial aid, student debt and loan forgiveness, on the composition of the law school class.

**Facilitator** **Lillian M. Moy**, Executive Director, Legal Aid Society of Northeastern New York

**Panelists** **Charles I. Auffant**, Clinical Professor of Law, S.I. Newhouse Center for Law & Justice, Rutgers School of Law

**Elaine M. Chiu**, Professor of Law; Director, Ronald H. Brown Center for Equal Rights and Economic Development, St. John's University School of Law

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**Anne Williams-Isom**, Chief Executive Officer, Harlem Children's Zone

**B. Infusing Diversity Issues and Access to Justice into the Law School Curriculum: Understanding the Skills, Professional Values and Cultural Competencies Greenberg Lounge**

An overview of the history of the justice gap will set the framework for the Work Group dialogue about the learning objectives law schools should identify, in furtherance of ABA Standard 302 and Court of Appeals Rule 520.18, to ensure that students acquire an understanding of the justice gap and recognize the lawyer's responsibility to ensure all individuals have equal access to the privileges of our justice system. The Work Group will examine existing examples of learning objectives related to access to justice, consider further formulations of such objectives, discuss how these objectives can be taught through the required curriculum and how law schools can assess students' competency for ethical participation in the profession. The Work Group will also explore how law schools can impart an understanding of the unique value pro bono legal services offer to people in need to achieve the fair administration of equal justice for all.

**Facilitator** **Connie Mayer**, Associate Dean for Academic Affairs; Raymond and Ella Smith Distinguished Professor of Law, Albany Law School

# PROGRAM

**Panelists** **Kim Diana Connolly**, Professor of Law; Vice Dean for Legal Skills; Director; Clinical Legal Education, SUNY Buffalo Law School

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## **C. Non-Lawyers Working to Help Narrow the Justice Gap and the Role of Law Schools and Law Students**

**Furman Hall 334**

The Work Group Session will examine the use of non-lawyers, in the New York State courts, neighborhood storefront centers, community organizations and law school clinics and practice settings, to enhance access to justice for unrepresented and self-represented individuals and the impact of this collaborative work on the administration of justice. The Work Group will consider how law schools can teach and train law students to effectively and efficiently work with non-lawyers to enhance access and ensure the fair administration of justice.

**Facilitator** **Thomas Maligno**, Executive Director, Public Advocacy Center; Director of Public Interest; Touro Law Center

**Panelists** **Natalia Faras**, Founder and Manager, Project Totem, Albany Law Clinic & Justice Center, Albany Law School, J.D. Candidate 2017

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**D. New Models for Cost Effective Legal Service Delivery  
to Enhance Access to Justice**

**Furman Hall 210**

The Work Group will explore innovative models of legal service delivery, teaching paradigms that incorporate digital lawyering and regulatory challenges that may unreasonably deter access-to-justice reforms. Against this backdrop, the Work Group will examine how these models can work to close the justice gap; explore how to effectively use technology to reach underserved communities; and, provide students with opportunities to develop the skills and cultural competencies to practice law in the 21st Century and narrow the justice gap.

**Facilitator** **Jack Graves**, Professor of Law & Director of Digital Legal Education, Touro Law Center

**Panelists** **Benjamin H. Barton**, (via Zoom from Tennessee) Helen and Charles Lockett Distinguished Professor of Law, University of Tennessee College of Law

**Lynn Lu**, Clinical Law Professor; Managing Attorney, Court Square Law Project, CUNY School of Law

**Leah Margulies**, Senior Advisor, LawHelp NY, Pro Bono Net

**1:15 - 1:45 pm Lunch**

**Greenberg Lounge**

**1:55 - 3:45 pm Afternoon Work Group Sessions: Part Two**

**Concurrent Sessions continue**

**Return to Rooms**

**3:55 - 4:35 pm Afternoon Plenary Session**

**Tishman Auditorium**

**Moderator** **Matthew Diller**, Dean and Paul Fuller Professor of Law, Fordham University School of Law; Chair, Law School Involvement Working Group, New York State Permanent Commission on Access to Justice

**Presentation** **Laren Spierer**, Director of Pro Bono Programs, Columbia Law School

Preview component chapter of the online Handbook of Best Practices for Supervising Law Student Pro Bono Work

**Reports from Facilitators of Work Group Sessions**

**Conference Recap** **Dean Diller**

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## EXHIBIT 2

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### **WORK GROUP A: Options for Law Schools to Support Access-to-Justice Activities and Involvement of Diverse Students**

#### **FIFTH ANNUAL LAW SCHOOL ACCESS TO JUSTICE CONFERENCE**

##### **Opening the Doors: Access to Law School as an Access-to-Justice Issue: Options for Law Schools to Support Access-to-Justice Activities and Involvement of Diverse Students**

#### **A. Community Involvement by Law Schools**

- Develop better relationships between law schools and community organizations
- Comprehensive prep program for economically disadvantaged
- Offer exposure to students early on – connect to local middle schools
- Recruit for public interest
- Joint college/law school program
- Broaden the 50-hour pro bono bar admission rule
- Shift law school mission to develop focus on local issues/community in early years
  - o Sweeten the pot for law school/coordinate the money

#### **B. Admissions**

- Interviews
- Diversity statement
- Admissions Fair
- Can Black Lives Matter rebirth action at law schools to broaden access to justice
- Holistic look at law school applicants – demand that the culture change
- Looking beyond LSAT and grades (numeric cut-offs, other factors/statements)
  - o Option to not submit LSAT
- Ask more questions related to issues that impact access – i.e., first generation, poverty, family education
- Diversity statement – optional
- Diverse admissions committee reviewing applications
- College/law school partnerships – direct entry from college (3&3); scholarship programs
- More recruitment at feeder schools with majority minority and low income community colleges and for profit colleges
- Diversity scholarships/funding from law firms
- Targeted recruitment and scholarships for older students/2nd career
- Preserve evening student programs
- Recruit from paralegals in legal services and government.

### C. Support once in Law School

- Infuse ourselves into the community
  - Point local youth to law school
  - Youth law development
  - Coordinate funding
- Broaden reach of 50-hour pro bono bar admission rule
  - Serve low income or diverse groups
- Support programs for students once in
- Summer/paid internships
- Diversity writ large
- Prepare change agents
- Increase access to paid prep programs
- Tie into LEO
- Lower tuition – scholarships
- Support training for faculty
  - Disclaimer
- Prepare agents for change
  - Opportunities to support my passion
- Earlier clinical/ATJ experiences – part of core curriculum in first year
- Learning lab – attacking race equity issues
- Paid internships
- School should have pro bono requirement
- Mandatory seminar on ATJ
- Better career public interest placement
- Better push on PBS program – should be a year
- Increase access to bar prep programs via scholarship

## EXHIBIT 3

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### **WORK GROUP B: Examples of Learning Outcomes Focused on Diversity & Access-to-Justice Issues**

#### **Infusing Diversity Issues and Access to Justice into the Law School Curriculum: Understanding the Skills, Professional Values and Cultural Competencies Work Group: Examples of Learning Outcomes Focused on Diversity & Access-to-Justice Issues**

##### **CUNY School of Law:**

4. Graduates will be able to critically analyze the social context in which a legal issue arises.

##### **Competency may be assessed through demonstrated:**

- Formation of individualized and independent judgments supported by legal doctrine;
- Ability to reflect on and reassess judgments based on new information;
- Recognition of the effects of the social and political context in which legal issues arise; and
- Recognition of the role of law in social change.

10. Graduates will understand the specific responsibilities and potential issues that arise when working with clients, including, among others, disempowered individuals, organizations, or when representing government entities.

##### **Competency may be assessed through demonstrated:**

- Understanding of lawyers' responsibilities to provide legal services to those unable to afford them; and
- Engagement in identifying and challenging bias in the legal profession.

12. Graduates will demonstrate an ability to work across difference.

##### **Competency may be assessed through demonstrated:**

- Recognition of the potential for structural inequality to negatively impact relationships with clients and others;
- Active listening and engagement with multiple perspectives; and
- Incorporation of theoretical perspectives in practice.

15. Graduates will be able to incorporate social justice lawyering into their practice.

##### **Competency may be assessed through demonstrated:**

- Understanding of the impact the law has on access to justice;
- Understanding of the role allocation of resources has on access to justice; and
- Familiarity with critical theoretical perspectives and how those perspectives may be incorporated into a social justice practice.

### **University of St. Thomas School of Law:**

#### **Learning Outcome 1:** Professional Formation and Ethical Responsibilities

Graduates will demonstrate an understanding of their professional and ethical responsibilities in serving clients, the profession, and society. Whether working in law, business, government, or the non-profit sector, each graduate will be able to describe his or her evolving professional identity, which is grounded in a moral core, includes a commitment to self-directed professional learning, and reflects a concern for the disadvantaged and those who lack access to justice.

### **University of Puerto Rico Law School**

Demonstrate sensibility to the problem of access to justice by economically disadvantaged groups.

### **Chicago-Kent College of Law**

**Learning Outcome:** Graduates will demonstrate knowledge and understanding of lawyer's moral, ethical, and professional responsibilities.

**Performance Indicators:**

c. Demonstrate awareness of attorneys' obligations to society, including the responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.

### **Albany Law School**

#### **Aspirational Goals for Our Graduates as Emerging Professionals:**

Embrace professional life that advances the mission of service to the underrepresented and recognizes the lawyer's responsibility to ensure all individuals have equal access to the privileges of our justice system.

### **Loyola University-New Orleans College of Law**

Graduates will be able to: recognize issues facing the vulnerable populations in society and the tools available to lawyers to affect change, and be alert to the Jesuit mission of service to those communities.

### **SMU-Dedman School of Law (proposed, not yet approved)**

**Outcome:** Graduates will understand the professional and ethical responsibilities of lawyers to clients and the legal system and the responsibility of the profession to provide access to justice and public service.

**Competency:** Graduates will demonstrate a commitment to public service.

### **Gonzaga University School of Law**

**Outcome:** Graduates will demonstrate knowledge of the importance of service to the profession and to the community at large.

**Competency 1:** Students will demonstrate an awareness of and a willingness to contribute to the profession's responsibility to ensure access to justice.

**Competency 2:** Students will demonstrate a willingness to contribute to serving the underserved and traditionally marginalized communities.