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Nonlawyers in the Legal Profession: Lessons from the Sunsetting of Washington's LLLT Program

Lacy Ashworth
University of Arkansas, Fayetteville

NONLAWYERS IN THE LEGAL PROFESSION: LESSONS FROM THE SUNSETTING OF WASHINGTON'S LLLT PROGRAM

Lacy Ashworth*

INTRODUCTION

Today, the number of attorneys in the world fails to serve the number of people in need of legal assistance.[1] Approximately sixty percent of law firm partners are baby boomers, meaning those in their mid-fifties to early seventies, and twenty-five percent of all lawyers are sixty-five or older.[2] These individuals will predictably retire. Meanwhile, law school costs more than ever. The average law student graduates $160,000 in debt only to enter into the legal profession with an average starting salary of $56,900 in the public sector and $91,200 in the private sector.[3] It is no surprise law schools have recently experienced lower enrollment numbers.[4] Again, we do not have enough lawyers *today* to meet the legal needs of our citizens. With a significant

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1. *See* discussion *infra* Part I.

2. Ida O. Abbott, *Your Boomer Retirement Problem Won't Just Fade Away*, ATT'Y AT WORK, [https://perma.cc/P2SM-KUBN] (July 7, 2020).

3. Melanie Hanson, *Average Law School Debt*, EDUCATIONDATA.ORG, [https://perma.cc/R2E9-8Q6R] (July 10, 2021).

4. *Id.* I want to give credit to Interviewee 2 and Interviewee 5 for calling my attention to the issue of retiring baby boomers. *See* Zoom Interview 2 with Ltd. License Legal Technician Bd. Member/Active Ltd. License Legal Technician 4 (Nov. 23, 2020); Telephone Interview 5 with Ltd. License Legal Technician Bd. Member 1 (Dec. 28, 2020).

percentage of our current lawyers reaching the age of retirement and less individuals choosing to become lawyers, the amount of unmet need will only continue to grow.

Recognizing the legal profession—in its traditional sense—has proven unable to fulfill its duty of providing access to justice to all, in 2012, Washington state effected the first-ever nonlawyer license to practice law.[5] An individual who attains the license through education and training is called a Limited License Legal Technician or "Triple-LT" ("LLLT").[6] In developing the license, proponents hoped the LLLT would become the nurse practitioner of the legal field.[7] Because this license is the first of its kind, it attracted the interest of several states and even areas beyond the United States.[8] Now, Utah and Arizona have implemented their own nonlawyer paraprofessional programs,[9] and other states are considering doing the same.[10]

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5. *See* Order in the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, No. 25700-A-1005, at 1 (June 15, 2012) [hereinafter 2012 Order for APR 28], [https://perma.cc/V72Q-GCBX]; *see also* Lyle Moran, *Washington Supreme Court Sunsets Limited License Program for Nonlawyers*, A.B.A. J. (June 8, 2020, 3:35 PM) [hereinafter Moran, *Article on LLLT Sunsetting*], [https://perma.cc/X7VX-X95R].

6. Ralph Schaefer, *Triple LT Rules 'Onerous'*, TULSA WORLD (Sept. 9, 2015), [https://perma.cc/7HH3-5PLE]; Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, A.B.A. J. (Jan. 1, 2015, 5:50 AM), [https://perma.cc/R6B5-MBS8].

7. *See* Stephen R. Crossland & Paula C. Littlewood, *The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 S.C. L. REV. 611, 613-14 (2014); Chief Justice Barbara Madsen & Stephen Crossland, *The Limited License Legal Technician: Making Justice More Accessible*, NWLAWYER, Apr.-May 2013, at 23.

8. Limited License Legal Technician (LLLT) Board Public Meeting with State Supreme Court, TVW 01:16:03-01:16:17 (May 12, 2020, 12:00 PM), [https://perma.cc/SFL8-RSJP] [hereinafter May 12, 2020 Meeting]. Such states include California, Colorado, Connecticut, Washington D.C., Florida, Illinois, Maryland, Minnesota, Montana, New York, and Vermont. *Id.* The outside areas include the Canadian provinces of Alberta, British Columbia, Manitoba, and Saskatchewan, as well as Singapore. *Id.* at 01:16:18-01:16:25.

9. *See Licensed Paralegal Practitioner*, UTAH CTS., [https://perma.cc/Q5WX-5A5Y] (Feb. 16, 2021) (referring to Utah's paraprofessionals as "Licensed Paralegal Practitioner[s]"); Lyle Moran, *Arizona Approves Nonlawyer Ownership, Nonlawyer Licensees in Access-to-Justice Reforms*, A.B.A. J. (Aug. 28, 2020, 2:20 PM) [hereinafter Moran, *Article on Arizona Nonlawyer Licensees*], [https://perma.cc/LM7U-FA4R] (referring to Arizona's nonlawyer licensees as "Legal Paraprofessionals").

10. *See* Jason Tashea, *Oregon Bar Considering Paraprofessional Licensing and Bar-Takers Without JDs*, A.B.A. J. (Oct. 7, 2019, 10:49 AM), [https://perma.cc/73YH-M4T9]; *see also* Letter from Stephen R. Crossland, Chair, Ltd. License Legal Technician Bd., to

Despite such interest, on June 4, 2020, eight years into the program, the Washington State Supreme Court decided to end the program by a seven-two majority vote.[11] The majority determined that while "[t]he program was an innovative attempt to increase access to legal services . . . the overall costs of sustaining the program and the small number of interested individuals" deemed it an ineffective way to meet such needs.[12] At that time, the cost of the program totaled $1.4 million and there existed only thirty-eight active LLLTs.[13] In "sunset[ting]" the program, the Court allowed existing LLLTs to maintain their licenses but disallowed the licensing of any new LLLTs after July 31, 2022,[14] leaving "at least" 275 people in the process of obtaining the necessary requirements either racing toward the finish line or dropping out altogether—losing all invested funds.[15] Ironically, only months before the sunsetting, the American Bar

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Justices of the Washington State Sup. Ct. 2 (June 19, 2020) [hereinafter Letter in Response to LLLT Sunsetting] (on file with the Author) (discussing California, New Mexico, Colorado, Minnesota, Connecticut, Massachusetts, and Ontario).

11. *See* Letter from C.J. Debra L. Stephens, Washington State Sup. Ct., to Stephen Crossland, Chair, Ltd. License Legal Technician Bd., Rajeev Majumdar, President, Washington State Bar Ass'n Bd. of Governors, and Terra Nevitt, Interim Exec. Dir., Washington State Bar Ass'n 1 (June 5, 2020) [hereinafter Letter Notification of Sunsetting] (writing on behalf of the Washington State Supreme Court, relaying that the majority voted on June 4, 2020 to sunset the LLLT program); Moran, *Article on LLLT Sunsetting*, *supra* note 5. Throughout this Comment, I also refer to the Washington State Supreme Court as "the Court."

12. Letter Notification of Sunsetting, *supra* note 11, at 1.

13. Daniel D. Clark, Treasurer, Wash. State Bar Ass'n Bd. of Governors, WSBA Treasurer's Response to the LLLT Program Business Plan, PowerPoint slides 7, 19 (May 12, 2020) [hereinafter Clark PowerPoint] (on file with the Author) (this PowerPoint was presented at the May 12, 2020 meeting between the LLLT Board, the Washington State Supreme Court, and other members of the WSBA). Note that there were forty-four licenses total, but only thirty-eight were active, with four inactive and one suspended. *Id.* at 7.

14. *See* Letter Notification of Sunsetting, *supra* note 11, at 1-2 (imposing the initial deadline of July 31, 2021). Shortly after the sunsetting, the LLLT Board asked the Court to reconsider its decision to sunset the program, or alternatively, to extend the deadline to August 1, 2023 to allow those in the pipeline to complete the requirements and to allow the National Center for State Courts ("NCSC") to complete its planned study of the LLLT program. Letter in Response to LLLT Sunsetting, *supra* note 10, at 6. *See infra* notes 385-88 and accompanying text for more information on the planned NCSC study. Inevitably, the Court met the LLLT Board in the middle, extending the deadline to July 31, 2022. *Decision to Sunset the LLLT Program*, WASH. STATE BAR ASS'N, [https://perma.cc/VU89-6Z4Y] (Oct. 8, 2021).

15. Letter in Response to LLLT Sunsetting, *supra* note 10, at 2, 4 (people in the pipeline "can ill-afford to absorb the loss of money and time spent pursuing the LLLT license"); Zoom Interview 2, *supra* note 4, at 7.

Association encouraged all jurisdictions "to consider innovative approaches to the access to justice crisis in order to help the more than eighty percent of people below the poverty line and the many middle-income Americans who lack meaningful access to effective civil legal services."[16]

As the push for state-level innovation to meet unmet legal needs is more prevalent than ever, it is critical for states to look at Washington's LLLT program, as it produced the first and longest-standing nurse practitioner-type professional to have entered the legal profession.[17] Because the Court deemed Washington's program ineffective,[18] states must determine whether, with what changes, and in what ways a nonlawyer paraprofessional program might better achieve viability to carry out the intended purpose of providing affordable legal services. Further, as nontraditional solutions continue to be considered, future and existing attorneys must prepare for change and look inward to see how they may better support and assist in achieving the larger goal that is providing affordable access to legal services to all. To aid in these future considerations, this Comment serves as an analysis of the LLLT program, discussing the lessons that may only be gleaned from being the first and with the benefit of hindsight.[19]

To better understand the sunsetting of Washington's LLLT program, I conducted interviews with sixteen individuals with

16. DON BIVENS, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES: REVISED RESOLUTION 1 (Feb. 2020); *see also* AM. BAR ASS'N HOUSE OF DELEGATES, RESOLUTION 115 (Feb. 17, 2020) [hereinafter RESOLUTION 115] (adopting Bivens' submitted report); *New ABA Policies Endorse Expanding Access to Justice, Voting*, A.B.A. (Feb. 24, 2020), [https://perma.cc/8YTK-YRL3].

17. *See* Madsen & Crossland, *supra* note 7; Letter Notification of Sunsetting, *supra* note 11, at 1.

18. *See* Letter Notification of Sunsetting, *supra* note 11, at 1.

19. At the time of the writing of this Comment, the June 2020 decision to sunset the LLLT program is somewhat recent. In fact, the decision has only been voiced by the Washington State Supreme Court via a letter to the relevant parties. *See* Letter Notification of Sunsetting, *supra* note 11. The Court has yet to provide a formal order officially documenting the fate of the program, though that order is anticipated. So while those involved have assuredly considered what went wrong with the program and how they might have done better to sustain it, because the current priority is supporting those in the pipeline working toward becoming LLLTs by the Court-imposed deadline, Washington has not yet had the opportunity to conduct its own formal postmortem. Zoom Interview 13 with Wash. State Bar Ass'n Exec. Leadership Team Member 4 (Jan. 8, 2021).

key roles and unique involvement in the program.[20] Such individuals include active LLLTs, members of the LLLT Board tasked with overseeing the program, previous members of the Practice of Law Board that initially proposed the program, current and former members of the Board of Governors ("BOG") of the Washington State Bar Association ("WSBA"), members of the Executive Leadership Team of the WSBA, a family law practitioner involved with the Family Law Section of the WSBA, and family law professors that were involved in the development and teaching of the LLLT curriculum.[21] Some individuals wore multiple hats; for instance, some were on the initial Practice of Law Board that proposed the program, and later became members of the LLLT Board.[22] Some LLLT Board members were also active LLLTs.[23] These individuals were able to provide perspectives from each of their respective roles.

Admittedly, the LLLT program and the concept of a nonlawyer serving clients in the legal profession became a political and controversial topic for Washington, as it was the first state to follow through with it.[24] The program had its supporters and opponents from its inception.[25] It too had people that were once opposed and later became supportive of the program, and

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20. Interviews were meant to be thorough, not copious. While most of the interviews were one-on-one, two interviews involved more than one participant. The questions were meant to elicit qualitative, not quantitative information, so while some questions were posed to each interviewee, others differed depending on the person's role in the program. Interviews were conducted via Zoom and telephone. While five interviews were recorded, the content of the majority of the interviews were documented using detailed notes.

21. When discussing a controversial topic such as this one, it is important to maintain focus on the program being examined and to consider the message more so than the specific messenger. Therefore, throughout this Comment, I omitted the names of the interviewees and provided only their roles to give context to their perspectives.

22. *See* Zoom Interview 1 with Ltd. License Legal Technician Bd. Member 1 (Nov. 23, 2020); Telephone Interview 5, *supra* note 4.

23. *See* Zoom Interview 2, *supra* note 4; Zoom Interview 3 with Ltd. License Legal Technician Bd. Member/Active Ltd. License Legal Technician (Dec. 18, 2020); Zoom Interview 4 with Ltd. License Legal Technician Bd. Member/Active Ltd. License Legal Technician (Dec. 18, 2020).

24. *See* Zoom Interview 9 with Fam. L. Professor/Ltd. License Legal Technician Instructor 2 (Nov. 30, 2020) (believing the program fell apart for three political reasons); Zoom Interview 12 with Wash. State Bar Ass'n Bd. of Governors Member 7 (Dec. 28, 2020); Telephone Interview 16 with Wash. State Bar Ass'n Bd. of Governors Member 5 (Dec. 17, 2020).

25. *See infra* Section II.A and Part III.

vice versa.[26] Consequently, while the insightful thoughts of sixteen individuals cannot be considered indicative of the feelings of all of those involved in the program, the goal was to interview people with different roles in and views on the program to counteract a skewed narrative.[27]

This Comment will be one of the first in-depth inquiries into the sunsetting of the LLLT program from the perspective of an outsider and with the insight of some of the key players. It will add to what surely will be a significant amount of scholarship, as Washington and other states consider what happened with the LLLT program and where to go from here. As the program has been in the making for more than twenty years and has undergone several changes in that time,[28] this Comment does not purport to take on *all* of the intricacies that impacted the program or led to the sunsetting, but it voices the afterthoughts of those involved, offers additional analysis and commentary on the reasons provided by the Court in sunsetting the program, and works to provide versatile and key lessons from the LLLT program that may be used by other states in developing their own innovative programs.

This Comment is divided into six parts. Part I discusses the current breadth of the access to justice phenomenon that has led to innovative programs being implemented nationwide, such as Washington's LLLT program. Part II provides the history of the LLLT license, its requirements, and the LLLT's scope of practice. Part III surveys the legal profession's reaction to the license. Part IV discusses both the anticipated success of the program at its inception and the success actually attained. Part V considers the reasons behind the demise of the program, including shortcomings of those tasked with supporting and administering

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26. *See infra* Section III.B.

27. Note also that while interviewees will be able to provide essential information and insight on the program through their roles, none can truly speak to the mindset of the voting members of the Washington State Supreme Court that ultimately decided to sunset the program, and no voice is indicative of all. Interviewee 12 noted that the Washington State Supreme Court is very available for discussion, and that it is not uncommon for an individual Justice to have a phone call with someone about court business and policies, so there are likely conversations regarding the program of which we will never know the content. *See* Zoom Interview 12, *supra* note 24, at 15.

28. *See infra* note 44 and accompanying text; Ambrogi, *supra* note 6.

the program and the structure and concept of the program itself. Finally, Part VI offers some lessons from the LLLT program that may be utilized by other states considering implementing similar nonlawyer programs to be used as potential stones in gradually bridging the access to justice gap.

I. THE ACCESS TO JUSTICE GAP

To understand the LLLT program as a proposed solution, it is important to first grasp the gravity of the problem. Access to justice is defined as the "ability of individuals to seek and obtain a remedy through formal or informal institutions of justice for grievances."[29] The access to justice gap is the difference between the population's legal needs and "the resources available to meet those needs."[30] Considering indigent criminal defendants are afforded the right to free legal representation, it is those in need of civil legal aid that largely suffer the effects of the access to justice gap.[31]

A 2017 study conducted by the Legal Services Corporation found 71% of low-income households experienced at least one civil legal problem within the year and received little or no legal aid in handling 86% of those problems.[32] The impact is most felt by low-income households, as there are more than sixty million Americans with family incomes below the 125% Federal Poverty Line, bringing home $30,750 or less for a family of four.[33] However, middle-income households are certainly not immune, considering 40-60% of their legal needs also go unmet.[34] These legal needs are most prevalently related to family, health, estate, consumer and finance, and housing law.[35] The gap is especially prevalent in family law, where 80-90% of cases involve at least

29. Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, A.B.A. (Dec. 3, 2017), [https://perma.cc/69ZL-5QAP] (internal quotations omitted).

30. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2017).

31. *Id.*

32. *Id.* at 6.

33. *Id.* at 16.

34. Jennifer S. Bard & Larry Cunningham, *The Legal Profession is Failing Low-Income and Middle-Class People. Let's Fix That*, WASH. POST (June 5, 2017), [https://perma.cc/X6DE-B4E2]; *see also* Wills, *supra* note 29.

35. LEGAL SERVS. CORP., *supra* note 30, at 7.

one self-represented party, and in many cases, both parties find themselves without legal assistance.[36]

So, what is the cause of the justice gap? Many fingers point to cost—the cost of obtaining legal aid generally, and the complexities of necessary civil litigation that can yield delays and additional costs.[37] For instance, considering 75% of all monetary civil judgements award less than $5,200, for most civil cases, it would cost more for a litigant to obtain a lawyer than the potential financial judgement rendered in the case.[38] Even if the litigant could afford to obtain an attorney for the matter, many attorneys would choose not to take the case due to the low pay-out.[39] Further, lawyers are encouraged, not compelled, to provide pro bono (free) services under the Model Rules of Professional Conduct.[40] Most states do not require lawyers to report pro bono hours.[41] Therefore, considering many lawyers enter the profession with significant debt and a comparatively low salary,[42] working pro bono is likely either unfeasible or not made a priority.

Regardless of the cause of the access to justice gap, with citizens in every state suffering from an inability to obtain access to justice for their important legal needs,[43] it is fair to assume every state can agree that the problem is serious enough to warrant looking outside the box of which the public's legal needs have certainly outgrown.

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36. NATALIE ANNE KNOWLTON, ET AL., INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 1 (2016).

37. *See* NAT'L CTR. FOR STATE CTS., CIVIL JUSTICE INITIATIVE: THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS iii, v (2015) ("[I]n most jurisdictions state courts hold a monopoly on procedures to enforce judgements."); 2012 Order for APR 28, *supra* note 5, at 4.

38. NAT'L CTR. FOR STATE CTS., *supra* note 37, at iv, vi.

39. *See id.*

40. MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR. ASS'N 2021).

41. Only nine states require their attorneys to report pro bono hours and Washington is not one of them. *Pro Bono Reporting*, A.B.A., [https://perma.cc/9W29-FTFA] (Mar. 19, 2020).

42. *See* Andrea Fuller, et al., *Law School Loses Luster as Debts Mount and Salaries Stagnate*, WALL ST. J., (Aug. 3, 2021, 8:01 AM), [https://perma.cc/NRY6-FZ3M].

43. LEGAL SERVS. CORP., *supra* note 30, at 7.

II. DEVELOPING THE LLLT PROGRAM

A. The Practice of Law Board

Washington's innovative thinking surfaced the first nonlawyer license to practice law. The history of the LLLT dates back to 2001, when the Washington State Supreme Court developed the Practice of Law Board to respond to two major concerns plaguing the state: unmet civil legal needs and the unauthorized practice of law ("UPL").[44] The Practice of Law Board consisted of thirteen court-appointed members who were responsible for reviewing and reporting cases of UPL and considering and recommending "new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined in [Washington]."[45] Any recommendations were to first be forwarded to the WSBA BOG for "consideration and comment at least 90 days before" being recommended to the Court.[46] The recommended program was to be created to increase access to affordable legal services in a way that protects the public and could be financially self-supporting "within a reasonable period of time."[47] Note that the Court's failure, unwillingness, or inability to define what constitutes a reasonable period of time would result in one of the program's greatest points of contention.[48]

In fulfilling its duty regarding UPL, the Practice of Law Board heard terrible cases of people getting taken advantage of

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44. WASH. GEN. R. 25; Ambrogi, *supra* note 6; Zoom Interview 1, *supra* note 22, at 1-2; Zoom Interview 8 with Fam. L. Professor/Ltd. License Legal Technician Instructor 1 (Dec. 15, 2020). However, keep in mind that those intimately involved discuss the history as going back even further, to the WSBA committees formed in the late 1980s and early 1990s to address UPL and "the growing number of people unable to afford professional legal help[,]" which "was dramatically true in family law cases where courts in the 1970s began reporting large increases in family law cases involving at least one party not represented by an attorney." Crossland & Littlewood, *supra* note 7, at 612-13.

45. WASH. GEN. R. 25(a), (b)(2)-(3). To address UPL, Washington first felt a more specific definition of the practice of law was necessary. A WSBA committee proposed a definition, which is captured in Washington's General Court Rule 24. Crossland & Littlewood, *supra* note 7, at 613; WASH. GEN. R. 24.

46. WASH. GEN. R. 25(b)(2).

47. *Id.* at 25(b)(2)(A), (E).

48. *See infra* Section V.A.1; *see also infra* note 389 and accompanying text.

when seeking aid from those unauthorized to practice law, who were sometimes charging more than attorneys.[49] While committing UPL is a crime, the Practice of Law Board was unsuccessful in getting prosecutors to bring charges against these perpetrators, as some prosecutors felt that it was not a big deal that someone was getting some help by a nonlawyer, and moreover, the idea that someone should be punished for taking money and business away from a lawyer would be hard to sell to a jury.[50] With nothing other than cease and desist letters and no real way to ratify or deter the harm caused, the Practice of Law Board existed as "a weapon without any ammunition."[51]

Then, in 2003, Washington conducted its own civil access to justice study.[52] The Civil Legal Needs Study found that "[a]pproximately 87[%] of low-income households experienced at least one . . . civil legal need" in the past year, and low-income households with civil legal problems averaged as many as 3.3 problems per year.[53] Low-income individuals faced more than 85% of these problems without professional legal assistance.[54] Most prevalently, these issues were related to housing, family, employment, consumer, and public and municipal services.[55] While low-income individuals were more likely to enlist an attorney for matters relating to family law, they still only did so 30% of the time.[56] Further, the study found women and children have more legal problems than the general population, which was especially true in family law.[57] These results further solidified the

49. Zoom Interview 1, *supra* note 22, at 1-2 (discussing how immigrant farm workers had some of the worst cases); Zoom Interview 8, *supra* note 44, at 1.

50. Zoom Interview 1, *supra* note 22, at 1 (noting there were also anticompetitive and antitrust problems disallowing the Bar from going after those committing UPL); Zoom Interview 8, *supra* note 44, at 1-2; Zoom Interview 10 with Fam. L. Prac. 1 (Dec. 23, 2020).

51. Zoom Interview 10, *supra* note 50, at 1.

52. TASK FORCE ON CIV. EQUAL JUST. FUNDING, WASH. STATE SUP. CT., THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY 5 (2003) [hereinafter CIVIL LEGAL NEEDS STUDY].

53. *Id.* at 23. In this study, low-income households are defined as those with incomes at or below the 125% federal poverty line. *Id.* at 19.

54. *Id.* at 25.

55. *Id.* at 33-35.

56. CIVIL LEGAL NEEDS STUDY, *supra* note 52, at 8.

57. *Id.*

need for the Practice of Law Board to fulfill its duty to explore ways to increase access to legal services.

With a twofold desire to protect consumers from UPL and provide more people with access to justice, in 2005, the Practice of Law Board "crafted a rule to create and regulate a new legal professional."[58] As required by the Court, the Practice of Law Board twice sent the proposed rule to the BOG for its consideration and comment, but it voted to oppose the rule each time.[59] After undergoing revisions, in 2008, the rule was sent to the Court, though it did not specify in which practice area these licensed individuals would serve.[60] With an eye toward the areas with prevalent UPL and those determined to have high unmet need by the 2003 Civil Legal Needs Study, the Practice of Law Board considered and consulted with expert practitioners in four practice areas: family, immigration, landlord-tenant, and elder law.[61] So when the Court requested the Practice of Law Board actually apply the proposed rule to a practice area in order to get a better idea of its general application, it is no surprise that the Practice of Law Board chose family law, evidenced by the 2003 Civil Legal Needs Study to be an area with immense need.[62]

The final proposal was sent back, and the Court sat silently on the proposal for two years, placing it on its agenda for a vote in 2010 and 2011, but tabling it each time.[63] The Practice of Law Board submitted further revisions in an attempt to address some of the lingering concerns presented by the BOG.[64] Then, on June 15, 2012, a six-three majority of the Court decided it was time to adopt the LLLT Limited Practice Rule ("Admission to Practice Rule 28" or "APR 28") "to provide limited legal assistance under carefully regulated circumstances in ways that expand the

58. Crossland & Littlewood, *supra* note 7, at 613.

59. *Id.*; Ambrogi, *supra* note 6.

60. Ambrogi, *supra* note 6; Zoom Interview 1, *supra* note 22, at 2 (stating the Practice of Law Board did not initially specify the practice area because they did not want to alienate any of the WSBA sections).

61. Telephone Interview 5, *supra* note 4, at 5; Zoom Interview 8, *supra* note 44, at 4.

62. E-mail from Stephen Crossland, Chair, Ltd. License Legal Technician Bd., to Lacy Ashworth, Ark. L. Rev. (Mar. 31, 2021) (on file with the Author).

63. Ambrogi, *supra* note 6; Zoom Interview 1, *supra* note 22, at 2 (noting that the Court did not want to meet with the Practice of Law Board during this time).

64. Ambrogi, *supra* note 6.

affordability of quality legal assistance which protects the public interest."[65] The rule went into effect September 1, 2012,[66] and in March 2013, family law became the first official practice area.[67]

B. LLLT Requirements

Upon the creation of the LLLT program, the baton was passed from the Practice of Law Board to a newly created LLLT Board, tasked with maintaining the LLLT curriculum, creating rules of professional conduct, determining the scope and authorizations of the LLLT, and proposing new practice areas and amendments to APR 28 to the Court for final approval.[68] Financially, the program was to be subsidized by the WSBA through bar dues until the program was self-supporting.[69] In developing the curriculum, the LLLT Board first had to consider what would be the scope of the LLLT.[70] The Board asked expert family law practitioners which aspects of family law were complicated and where it would be really significant to make a mistake.[71] These were the areas that would be left to attorneys.[72]

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65. WASH. ADMISSION TO PRAC. R. 28(A); 2012 Order for APR 28, *supra* note 5, at 6. It is no secret among those involved in the LLLT program that Justice Barbara Madsen of the Washington State Supreme Court was the program's biggest advocate on the Court. It seems to be more than coincidence that she sat as Chief Justice when, after two years, the Court finally voted in favor of implementing the program in 2012. *See generally* Letter from J. Barbara Madsen, Washington State Sup. Ct., to Stephen Crossland, Chair, Ltd. License Legal Technician Bd., Rajeev Majumdar, President, Washington State Bar Ass'n Bd. of Governors, and Terra Nevitt, Interim Exec. Dir., Washington State Bar Ass'n 1 (June 5, 2020) (on file with the Author) (this letter serves as her strong dissent to the Court's decision to sunset the LLLT program); Wash. State Bar Ass'n, *Become a Legal Technician*, YOUTUBE (Apr. 8, 2019), [https://perma.cc/4XXG-BPY6]; Madsen & Crossland, *supra* note 7, at 23; Zoom Interview 10, *supra* note 50, at 4.

66. 2012 Order for APR 28, *supra* note 5, at 12; WASH. ADMISSION TO PRAC. R. 28.

67. Crossland & Littlewood, *supra* note 7, at 616.

68. WASH. ADMISSION TO PRAC. R. 28(C)(2) (listing additional responsibilities).

69. *See* 2012 Order for APR 28, *supra* note 5, at 1-2 (Owens, J., dissenting); Telephone Interview 16, *supra* note 24, at 4.

70. Crossland & Littlewood, *supra* note 7, at 616 ("Subject to some limitations, the scope of practice generally includes the following areas: child support modification actions, dissolution and legal separation actions, domestic violence actions, committed intimate relationship actions, parenting and support actions, major parenting plan modifications, paternity actions, and relocation actions.").

71. Telephone Interview 5, *supra* note 4, at 3.

72. *Id.*

It then engaged family law professors from Washington's three law schools to aid in creating the curriculum.[73]

A LLLT is defined as "a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law . . . ."[74] Therefore, to ensure quality legal assistance, LLLTs must prove competence through "education, examination, and experience."[75] LLLTs must have an associate degree or higher.[76] They must complete forty-five credits of legal coursework at an ABA-approved law school or an ABA-approved or LLLT Board-approved paralegal program, and it is envisioned that they use these credits to attain the requisite associate degree.[77] However, paralegals with ten or more years of experience working under the supervision of an attorney can waive the associate degree requirement and the forty-five credits of legal coursework through the program's waiver process.[78] Every candidate must complete fifteen credits in a specific practice area, and because family law is the only area in which the LLLT may serve, the fifteen credits consist of Family Law I, II, and III.[79] For a student attending full-time, this core education may be obtained in two years.[80] These courses are taught online to make the program

73. Crossland & Littlewood, *supra* note 7, at 617; Telephone Interview 5, *supra* note 4, at 4; Zoom Interview 8, *supra* note 44, at 1; Zoom Interview 9, *supra* note 24, at 1.

74. WASH. ADMISSION TO PRAC. R. 28(B)(4).

75. *Become A Legal Technician*, WASH. STATE BAR ASS'N, [https://perma.cc/BHJ4-Y3QV] (Oct. 8, 2021).

76. Crossland & Littlewood, *supra* note 7, at 617.

77. *Id.* The legal curriculum must include eight credits of Civil Procedure, three credits of Contracts, three credits of Interviewing and Investigation Techniques, three credits of Introduction to Law and Legal Process, three credits of Law Office Procedures and Technology, eight credits of Legal Research, Writing, and Analysis, and three credits of Professional Responsibility. *Become A Legal Technician*, *supra* note 75.

78. *Limited-Time Waiver*, WASH. STATE BAR ASS'N, [https://perma.cc/9PBW-6MVK] (Oct. 8, 2021).

79. WASH. STATE BAR ASS'N, REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS 16 (2016) [hereinafter REPORT: THE FIRST THREE YEARS]; *See also* Crossland & Littlewood, *supra* note 7, at 617 ("five credits in basic family law and ten credits in advanced and Washington law-specific topics.").

80. Letter in Response to LLLT Sunsetting, *supra* note 10, at 2 (making this estimation under the assumption that the candidate does not enter the program through the waiver process and is able to attend full-time, and that the community college offers the required classes in the necessary order).

more accessible and with the hope that individuals in rural communities may obtain the license and remain to aid those in need in their rural areas where attorneys are less prevalent.[81]

To be qualified by examination, candidates must pass a general paralegal exam, a LLLT practice area exam, and the LLLT professional responsibility exam.[82] Finally, to be qualified by experience, the candidate was required to complete 3,000 hours of substantive legal work signed off by a supervising attorney.[83] However, upon sunsetting the program, the Court agreed to amend the required experience hours from 3,000 to 1,500 to make it easier for candidates in the pipeline to obtain the license by the cut-off date.[84] While decreasing the required hours by half seems drastic, the LLLT Board had already determined that 3,000 hours was unduly burdensome and that the same benefit of thorough training could be experienced with 1,500 hours.[85] Attaining the license costs approximately $15,000.[86] With less debt than the average lawyer, the idea was that LLLTs could provide a limited range of quality services at a more affordable rate than attorneys, whose prices presumably reflect a need to pay off law school debt.[87]

Upon obtaining the license, like attorneys, LLLTs become members of the bar, they are required to pay bar fees, are subject to discipline, are held to ethical standards outlined by rules of professional conduct, are required to engage in continuing

81. *See* Crossland & Littlewood, *supra* note 7, at 617-18; Telephone Interview 5, *supra* note 4, at 1, 4; Zoom Interview 9, *supra* note 24, at 1; Zoom Interview 8, *supra* note 44, at 2.

82. *Become A Legal Technician*, *supra* note 75.

83. REPORT: THE FIRST THREE YEARS, *supra* note 79, at 15.

84. Zoom Interview 2, *supra* note 4, at 7; Lyle Moran, *How the Washington Supreme Court's LLLT Program Met its Demise,* A.B.A. J. (July 9, 2020, 1:46 PM), [hereinafter Moran, *How the Washington Supreme Court's LLLT Program Met its Demise*], [https://perma.cc/VY2W-9VFR].

85. STEPHEN CROSSLAND, LTD. LICENSE LEGAL TECHNICIAN BD., REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE CHALLENGES OF BEING FIRST IN THE NATION Bookmark 5, at 6 (2020) [hereinafter MARCH 2020 REPORT OF THE LLLT PROGRAM]; Zoom Interview 1, *supra* note 22, at 8; Telephone Interview 5, *supra* note 4, at 4; Telephone Interview 16, *supra* note 24, at 3.

86. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 8; REPORT: THE FIRST THREE YEARS, *supra* note 79, at 26.

87. Zoom Interview 1, *supra* note 22, at 3.

education, and are highly encouraged to deliver pro bono services.[88] The LLLT Rules of Professional Conduct state LLLTs should aspire to complete at least thirty hours of pro bono service and LLLTs showing fifty hours or more receive commendation.[89] However, unlike most attorneys, LLLTs are also required to have professional liability insurance.[90] These requirements were enacted to ensure consumer protection.[91] After developing the scope, curriculum, rules, requirements, and exams for LLLTs, the first LLLT entered the legal profession through the waiver process in mid-2015.[92]

C. LLLT Authorizations

When the Court first passed APR 28, LLLTs were authorized to assist pro se (self-represented) litigants with "simple legal matters[,] such as selecting and completing court forms, informing clients of procedures and timelines, explaining pleadings, and identifying additional documents that may be needed in a court proceeding."[93] LLLTs may work in law firms, have their own solo practices, or work with non-profit organizations.[94] The promise, at that time, was that LLLTs "would not be able to represent clients in court or contact and negotiate with opposing parties on a client's behalf."[95]

88. Crossland & Littlewood, *supra* note 7, at 612; WASH. ADMISSION TO PRAC. R. 28(I)(3), (K)(2); LTD. LICENSE LEGAL TECHNICIAN RULES OF PRO. CONDUCT r. 6.1 (2015).

89. LTD. LICENSE LEGAL TECHNICIAN RULES of PRO. CONDUCT r. 6.1 (2015).

90. WASH. ADMISSION TO PRAC. R. 28(I)(2); Zoom Interview 8, *supra* note 44 at 3. Only Oregon and Idaho have malpractice insurance requirements for their attorneys. Susan Humiston, *Practicing Law Without Liability Insurance*, MINN. STATE BAR ASS'N, [https://perma.cc/2726-P2PB] (last visited Oct.13, 2021).

91. Crossland & Littlewood, *supra* note 7, at 612.

92. Moran, *How the Washington Supreme Court's LLLT Program Met its Demise*, *supra* note 84; Zoom Interview 9, *supra* note 24, at 2; Zoom Interview 2, *supra* note 4, at 3.

93. Madsen & Crossland, *supra* note 7, at 23; *see also* WASH. ADMISSION TO PRAC. R. 28(F) (listing LLLT authorizations).

94. *See* 2012 Order for APR 28, *supra* note 5, at 8-9; *see also* Rebecca M. Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE U.L. REV. 1, 2, 43 (2018) (finding, after interviewing a majority of the first two cohorts of LLLTs and LLLT candidates, that LLLTs primarily planned to work in law firms or maintain solo practices).

95. 2012 Order for APR 28, *supra* note 5, at 8.

However, because LLLTs were unable to accompany their clients in court, clients found themselves at a loss when the judge asked questions about their LLLT-prepared documents.[96] One LLLT found herself preparing scripts for her anxious clients to assist them in the courtroom.[97] After having LLLTs practice in the legal profession for four years, it became clear to LLLTs, LLLT Board members, and others that submitted comments to the Court that LLLTs would be better able to serve clients if they could accompany them in court.[98] On May 1, 2019, a close five-four majority of the Court agreed and expanded the scope of the LLLT under APR 28.[99] Following this decision, LLLTs could negotiate with opposing counsel on behalf of their clients and accompany and assist them in depositions and certain court hearings, where they could respond to direct questions from the judge regarding factual and procedural issues.[100] With this new ability, LLLTs noticed their clients' anxiety levels decrease, and one asserted that with her present, her clients were no longer badgered by opposing counsel.[101]

Yet, as suggested by the close majority decision, not everyone was for the idea of allowing LLLTs into the courtroom. While many were against the program from the start, others turned against the program upon this expansion.[102] The dissent

96. Zoom Interview 9, *supra* note 24, at 3; *see also* Telephone Interview 5, *supra* note 4, at 2.

97. Zoom Interview 6 with Active Ltd. License Legal Technician 2 (Nov. 23, 2020).

98. Telephone Interview 5, *supra* note 4, at 2; *see also* Zoom Interview 6, *supra* note 97, at 2; Zoom Interview 9, *supra* note 24, at 3.

99. Order in the Matter of Proposed Amendments to APR 28—Limited Practice Rule for Limited License Legal Technicians, No. 25700-A-1258, at 2 (May 1, 2019) [hereinafter Order to Expand APR 28].

100. WASH. ADMISSION TO PRAC. R 28 app. at regul. 2(B)(2)(h); Order to Expand APR 28, *supra* note 99, at 2 (González, J., dissenting); *see also* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 9 (aiding judges by listing the LLLT's permitted courtroom activities).

101. Zoom Interview 4, *supra* note 23, at 2.

102. *See* Zoom Interview 9, *supra* note 24, at 3 (noting the amendments seemed to push the Court "just a movement too far."); *see also* Dan Bridges, *Treasurer's Note: The Cost of LLLTs*, NWLAWYER, Sept. 2019, at 48-49; Telephone Interview 11 with Wash. State Bar Ass'n Bd. of Governors Member 1 (Dec. 21, 2020); Zoom Interview 12, *supra* note 24, at 2. Note that Justice González was in the majority when the Court adopted APR 28 in 2012, but he authored the dissent to the Order expanding the program in 2019. Order to Expand APR 28, *supra* note 99, at 1-2 (González, J., dissenting).

believed the program had not proven itself to be a sustainable business plan to meet unmet legal needs, and that expansion should not be considered until evidence could be provided to show otherwise.[103] Moreover, the dissent felt the majority's decision "fundamentally change[d]" the program by allowing LLLTs to do that which they were "never meant to."[104] This sentiment was shared by lawyers and members of the BOG that felt the LLLT Board, in getting the program approved and later proposing to amend it, had essentially effectuated a bait and switch.[105] The majority of the Court, in approving the expansion, had too backed out of their initial promise.[106]

III. REACTIONS FROM THE LEGAL COMMUNITY

Even today, doctors and nurse practitioners struggle to coexist. Doctors question whether nurse practitioners are qualified to aid patients in certain ways and the permissible scope of nurse practitioners remains a topic of debate.[107] It is no surprise then, that lawyers would have similar concerns about what was presented as the nurse practitioner of the legal profession.[108]

A. WSBA Family Law Section

In 2009, when the Washington State Supreme Court was considering the Practice of Law Board's program proposal, the Family Law Section—existing as one of the largest and most

103. Order to Expand APR 28, *supra* note 99, at 2 (González, J., dissenting).

104. *Id.* at 1-2 ("LLLTs were never meant to legally advocate on behalf of a client.").

105. *See* Bridges, *supra* note 102, at 50 ("[T]he program's proponents made representations, many of which were so quickly abandoned it is reasonable to ask if they were ever intended to be kept."); *see also* Zoom Interview 10, *supra* note 50, at 1 ("The program was pitching smoke and mirrors."); Telephone Interview 11, *supra* note 102, at 1-2.

106. *See supra* notes 93-95 and accompanying text.

107. *See Where Can Nurse Practitioners Work Without Physician Supervision?*, SIMMONS UNIV., [https://perma.cc/Y2CM-X8PQ] (last visited Oct. 13, 2021); Heather Stringer, *Nurse Practitioners Gain Ground on Full Practice Authority*, NURSE.COM (July 24, 2019), [https://perma.cc/4WJK-S8F4] (noting twenty-two states allow nurse practitioners to practice independently of doctors, suggesting the remaining twenty-eight states disagree that they should be able to); Zoom Interview 3, *supra* note 23, at 2.

108. *See supra* note 7 and accompanying text.

active sections of the WSBA[109]—discovered that the program may enter the family law arena and wrote a letter requesting the Court "resoundingly reject [it], in the strongest possible terms."[110] The Family Law Section felt that instead of helping with access to justice, the program would "dilute resources" already available that would benefit from "greater support from the Court, the Bar, and the Legislature."[111]

The Family Law Section did not believe LLLT services would actually cost less than attorneys, noting that while the education and training costs significantly less than law school, LLLTs would still have to pay presumably the same office rent and expenses as attorneys.[112] Further, it disliked that there were no controls on the rates that could be charged by LLLTs and that the Practice of Law Board did not provide economic data requested by the WSBA BOG regarding the cost of the program itself and the prices LLLTs would likely need to charge to maintain an office.[113] The Family Law Section believed this information was key to determining the economic viability of the program.[114]

Further, it did not feel there was or would be enough interest in this type of program to bring in the numbers necessary to make it self-supporting.[115] Believing candidates were to be experienced paralegals, it did not believe long-time paralegals would want to move to rural areas where services are most needed.[116] Additionally, the LLLT was likened to Washington's then-existing Limited Practice Officer ("LPO"), which had hundreds of candidates in previous years, but only fifteen applicants in its most recent year, so the Family Law Section did not think the

109. Telephone Interview 16, *supra* note 24, at 2; *see also* Zoom Interview 10, *supra* note 50, at 1; *Family Law Section*, WASH. STATE BAR ASS'N, [https://perma.cc/XQ8A-FUVN] (Oct. 1, 2021) (providing further information on the Family Law Section).

110. Letter from Jean Cotton, Outgoing Chair, Fam. L. Section Exec. Comm., Washington State Bar Ass'n, to C.J. Charles Johnson, Washington State Sup. Ct. 1 (Apr. 28, 2009) (on file with the Author).

111. *Id.* at 4.

112. *Id.*

113. *Id.*

114. *Id.*

115. Letter from Jean Cotton, *supra* note 110, at 4-5.

116. *Id.* at 4.

LLLT program would conjure sufficient candidates.[117] As the Court inevitably cited a lack of interest as one of the two reasons for sunsetting the program in 2020, this 2009 prediction was not far off.[118]

The Family Law Section also noted that family law is one of the most challenging practice areas and has incredibly high stakes.[119] It listed several potentially problematic scenarios that may be caused by the proposed legal technician in providing "inaccurate or inadequate" services.[120] Instead of placing resources into what it felt would be an unsuccessful and harmful program, the Family Law Section asked that the Court support and fund other projects it believed would better provide quality services to low-income individuals.[121] For instance, it suggested increased support for Washington's then-existing Courthouse Facilitator program, which serves to help pro se litigants in obtaining and completing the correct forms.[122] It further suggested supporting existing civil legal service programs that allow attorneys to provide low and pro bono work, continuing to work to simplify mandatory forms, and educating lawyers and the public about the benefit of unbundled services.[123]

The Family Law Section was not alone in its feelings against LLLTs serving in its practice area. As early as 2007, the Elder Law Section of the WSBA and the National Academy of Elder Law Attorneys expressed similar concerns about the quality of services nonlawyers would provide and also suggested the funds and efforts instead be used to expand and improve existing

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117. *Id.*

118. *See* Letter Notification of Sunsetting, *supra* note 11, at 1.

119. Letter from Jean Cotton, *supra* note 110, at 5.

120. *Id.* (listing: (1) "loss of custody or contact with one's children[;]" (2) "erroneous child support obligation calculations[;]" (3) "inequitable or inaccurate allocation property and liabilities in dissolutions[;]" (4) "misidentification of fathers[;]" (5) "waiver of parentage challenges[;]" and (6) "lack of or inappropriate issuance of restraining or protective orders").

121. *Id.* at 2-4.

122. *Id.* at 2-3. *See generally Courthouse Facilitators: How Courthouse Facilitators Can Help*, WASH. CTS., [https://perma.cc/9R8T-D5TF] (last visited Oct. 13, 2021) (providing more information on the Courthouse Facilitator program).

123. Letter from Jean Cotton, *supra* note 110, at 3-4. Unbundled services allow clients to pay lawyers only for limited services rather than for the entirety of the representation. *Unbundled Legal Services*, A.B.A., [https://perma.cc/2URR-X93W] (last visited Oct. 13, 2021).

programs.[124] However, despite such concerns, the Court decided to adopt APR 28 and allow LLLTs to practice family law.[125] Then, when the WSBA's BOG voted to allow LLLTs, who were now members of the WSBA, to join WSBA sections, several members of the Family Law Section left to create their own group called the Domestic Relations Attorneys of Washington ("DRAW"), in which LLLTs were not allowed.[126]

The Family Law Section's opposition toward the program was believed by some to be none other than turf protection—a desire to maintain its monopoly on providing family law services in Washington.[127] However, a family law practitioner stated that the only time the Family Law Section discussed that LLLTs would be taking away work from its members was when discussing the risk LLLTs posed to young lawyers with little experience and considerable debt that must charge the minimum.[128] Perhaps some members of the Family Law Section came around, as one LLLT was elected to its executive board.[129] Still, for many family law practitioners, the sentiment toward the

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124. *See* Letter from Karl L. Flaccus, Chair, Elder L. Section, Washington State Bar Ass'n, to Stephen Crossland, Chair, Prac. of L. Bd. 1-2, 4, 6-7, 11 (Oct. 5, 2007) (on file with the Author); Letter from Erv DeSmet, President, Nat'l Acad. of Elder L. Att'ys, to Stephen Crossland, Chair, Prac. of L. Bd. 2-4, 7 (Oct. 12, 2007) (on file with the Author).

125. *See* 2012 Order for APR 28, *supra* note 5. One interviewee believed that a major problem with the program was that it was first initiated in family law. Telephone Interview 16, *supra* note 24, at 2-3. While he recognized that family law is an area of immense need and that LLLTs should have entered that arena eventually, he did not think they should have initially done so, because the Family Law Section, as one of the biggest and most involved sections of the WSBA, had the ability to present strong opposition. *Id.* He noted lawyers in family law are merely getting by, rather than earning an overflow of cash, so they were largely offended and worried about the financial threat. *Id.* Seemingly responding to the Family Law Section's suggestion regarding Courthouse Facilitators, in the Court's Order, it discussed Courthouse Facilitators, saying that they serve the courts and not pro se litigants, so there is a "gap" in the types of services available to pro se litigants. 2012 Order for APR 28, *supra* note 5, at 5. The Court also acknowledged the Family Law Section's efforts in providing public and pro bono services and working to provide more affordable rates, but stated that because of the scope of the LLLT, LLLTs are unlikely to have "any appreciable impact on attorney practice[,]" and noted, moreover, that "[p]rotecting the monopoly status of attorneys in any practice area is not a legitimate objective." *Id.* at 7-8.

126. Zoom Interview 10, *supra* note 50, at 3; Zoom Interview 9, *supra* note 24, at 3; Zoom Interview 1, *supra* note 22, at 6.

127. *See* Telephone Interview 5, *supra* note 4, at 3; Zoom Interview 4, *supra* note 23, at 2; Zoom Interview 9, *supra* note 24, at 3.

128. Zoom Interview 10, *supra* note 50, at 4.

129. Telephone Interview 5, *supra* note 4, at 3.

LLLT program remained unchanged.[130] Upon the sunsetting of the program, several family law practitioners held a huge party by Zoom, phone, and text to celebrate that they could finally protect their clients.[131]

B. Lawyers

While those involved in the WSBA's Family Law Section knew about the program, a member of the BOG estimated eighty percent of the lawyers in Washington never heard of the LLLT, and another admitted he was among the eighty percent until joining the BOG.[132] This estimation would make sense considering there were only thirty-eight active LLLTs in the legal profession at the time of sunsetting and they were only permitted to work in family law,[133] so lawyers in other practice areas who were not actively involved in the WSBA or working with LLLTs in family law would not have occasion to take notice of the program.

Regarding the reactions of the estimated remaining twenty percent, while some lawyers were in favor of the program, others were emphatically opposed. Lawyers would show up to forums meant to educate the public on the role of the LLLT only to assert statements against the program that were not true, such as the complaint that LLLTs do not need malpractice insurance, suggesting future impacted clients would not have recourse for mistakes made by LLLTs.[134] One previous Practice of Law Board member noted that involved proponents made efforts to educate attorneys on the role of the LLLT to show how they would not step on toes, and even a justice on the Washington State Supreme Court authored a newsletter to that effect, but all attempts to educate seemed to fall on deaf ears.[135]

Lawyers against the program affected LLLT candidates in fulfilling their requirements. Recall that LLLTs needed 3,000

130. *See* Zoom Interview 10, *supra* note 50, at 3.

131. *Id.*

132. Telephone Interview 11, *supra* note 102, at 9; Zoom Interview 12, *supra* note 24, at 1.

133. *See* Clark PowerPoint, *supra* note 13, at slide 7.

134. Zoom Interview 8, *supra* note 44, at 4.

135. *Id.*

hours of legal work signed off by an attorney.[136] Some attorneys refused to certify that the LLLT had completed their hours.[137] Upon entering the legal profession, some LLLTs faced demeaning comments, suggestions that they did not know what they were doing, and refusals to communicate that disadvantaged their clients.[138] Further, like the Family Law Section, some county bar associations fought having LLLTs become members.[139]

Luckily, not all LLLT-attorney interactions have been bad, as many improved as LLLTs worked in the profession.[140] One LLLT stated she now gets referrals from family law attorneys.[141] One stated that while some lawyers are demeaning and infuriated that LLLTs exist, some are glad "to have a nurse practitioner on the team if they need to go into surgery."[142] A member of the LLLT Board stated that some family law practitioners that were initially against the program now admit they find LLLTs help the process for everybody, a sentiment also expressed by some judges that have had the opportunity to run cases more efficiently and cost-effectively with pro se litigants receiving assistance from LLLTs.[143] Further, as a number of LLLTs work in law firms,[144] there would appear to be several collaborative, if not amicable, relationships between LLLTs and their affiliating attorneys.[145]

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136. REPORT: THE FIRST THREE YEARS, *supra* note 79, at 15.

137. Zoom Interview 1, *supra* note 22, at 6; Zoom Interview 4, *supra* note 23, at 2 (because attorneys were not signing off on LLLT work, she created a contract binding her supervising attorneys to sign off on her completed hours).

138. Zoom Interview 3, *supra* note 23, at 2 (noting the less kind interactions were a result of attorneys not knowing the role of the LLLT); Zoom Interview 4, *supra* note 23, at 2; Zoom Interview 6, *supra* note 97, at 1; Zoom Interview 7 with Active Ltd. License Legal Technician 1 (Nov. 28, 2020).

139. Zoom Interview 2, *supra* note 4, at 4; Telephone Interview 16, *supra* note 24, at 1.

140. Zoom Interview 1, *supra* note 22, at 6.

141. Zoom Interview 3, *supra* note 23, at 2.

142. Zoom Interview 6, *supra* note 97, at 1.

143. Telephone Interview 5, *supra* note 4, at 2-3.

144. *See* Letter from Dan Bridges, Treasurer, Washington State Bar Ass'n Bd. of Governors, to C.J. Mary Fairhurst, Washington State Sup. Ct. 2 (July 9, 2019) (on file with the Author); Donaldson, *supra* note 94, at 43; Zoom Interview 2, *supra* note 4, at 1 (works in a firm); Zoom Interview 6, *supra* note 97, at 2 (worked in a firm, but is now solo).

145. *See* Telephone Interview 16, *supra* note 24, at 1 (noting mutually beneficial relationships between attorneys and LLLTs); Sart Rowe, Comment to Washington State Bar

C. WSBA Board of Governors

Many members of the BOG also opposed the implementation of the LLLT program. One LLLT Board member asserted that the time in which it took the program to get approved is indicative in and of itself of the resistance to the concept.[146] Recall that in 2001, when the Washington State Supreme Court created the Practice of Law Board to consider ways to provide more individuals with access to legal services, it required the Board first submit any recommendation to the BOG for "consideration and comment" before submitting to the Court.[147] If the Court instead required the Practice of Law Board to receive the BOG's approval before submitting the proposal to the Court, the LLLT program would not have been implemented, and surely would not have been expanded.[148]

As required by the Court, in 2006, the Practice of Law Board submitted the first drafted legal technician rule to the BOG.[149] The BOG unanimously voted against it, but left open the possibility of revision and resubmission.[150] In January 2008, the Practice of Law Board submitted a refined version to the Court and the BOG asked the Court to refrain from acting to allow it time to "solicit feedback from members and formulate a position."[151] In late 2008, the BOG again unanimously voted against the rule.[152] Even when the Court finally approved the program in 2012, the BOG remained, for the most part,[153] opposed.

Association, FACEBOOK (May 12, 2020), [https://perma.cc/6385-49RH] (stating he is a family law attorney that has had good experiences with the quality of work from LLLTs and has partnered with them on cases).

146. Zoom Interview 1, *supra* note 22, at 2.

147. *See supra* text accompanying note 46.

148. Telephone Interview 11, *supra* note 102, at 4.

149. Ambrogi, *supra* note 6.

150. *Id.*

151. *Id.*

152. *Id.*

153. At one point in time, the WSBA and the BOG seemed in support of the program, as evidenced by their voting to allow LLLTs to become members of WSBA sections, i.e., the Family Law Section. *See* Telephone Interview 5, *supra* note 4, at 3; Zoom Interview 10, *supra* note 50, at 3. However, one interviewee believed this vote took place when the Chair of the LLLT Board was President of the BOG, and a major advocate of the program was serving as Executive Director of the WSBA. Zoom Interview 10, *supra* note 50, at 3. Also,

Before the program's implementation, the BOG expressed several client-centered concerns about nonlawyers practicing law, "even in a 'limited' manner."[154] It worried that the limited licensed individuals might represent clients in court and did not believe they could be trusted to "identify nuances and risks lawyers occasionally miss."[155] As the Court inevitably approved APR 28 over the BOG's objection and required the WSBA to subsidize the program, members of the BOG likely took whatever comfort they could in the initial assurances that LLLTs would not represent clients in the courtroom and that LLLT fees would make the program financially self-supporting in a reasonable period of time.[156] With these assurances, some BOG members supported the program.[157]

However, the BOG reiterated opposition when the Court voted to allow LLLTs into the courtroom in 2019, and when the program was not producing the number of LLLTs necessary to achieve financial independence from the WSBA in what the BOG considered to be a reasonable amount of time.[158] A deeper discussion of the BOG's financial concerns ensues in Section V.A.[159]

In addition to these concerns related to LLLT scope of practice, cost of the program, and time to attain self-sufficiency, the BOG also voiced its concern that the LLLT program might become a "pink collar" profession.[160] Members of the BOG noted

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it is important to recognize that there were some advocates on the BOG, one being their liaison. Zoom Interview 2, *supra* note 4, at 3; Telephone Interview 16, *supra* note 24, at 1; *see also* Zoom Interview 12, *supra* note 24, at 10 (mentioning a BOG member who was a big supporter).

154. Bridges, *supra* note 102, at 48.

155. *Id.*

156. 2012 Order for APR 28, *supra* note 5, at 8; WASH. GEN. R. 25(b)(2)(E).

157. *See* Telephone Interview 11, *supra* note 102, at 1 (advocating for insurance companies to cover LLLTs and for their acceptance into local bar associations); Bridges, *supra* note 102, at 50 (noting "I am not against LLLTs as originally conceived.") (emphasis omitted); Letter from Dan Bridges, *supra* note 144, at 5 (noting the same).

158. *See* Clark PowerPoint, *supra* note 13, at slide 2; Letter from Dan Bridges, *supra* note 144, at 2; Telephone Interview 11, *supra* note 102, at 1; Zoom Interview 12, *supra* note 24, at 1.

159. *See infra* Section V.A.

160. Letter from Christina A. Meserve, Washington St. Bar Ass'n Bd. of Governors, to Sup. Ct. JJ., Washington State Sup. Ct. 1 (July 1, 2019) (on file with the Author); Bridges, *supra* note 102, at 50.

that a majority of LLLTs and LLLT Board members are women and worried that this new limited profession was averting capable women from going to law school.[161]

IV. SUCCESS OF THE LLLT PROGRAM: ANTICIPATED AND ATTAINED

A. Anticipated

To determine the LLLT program's success, it is important to first define how it was meant to be measured. Yet, a debilitating issue underlying the LLLT program was that there were differing views on the role that LLLTs were intended to play and the intended targets for their services. When there are different expectations and definitions of success, of course there will be conflicting opinions about whether those expectations have been met. However, the only expectations that truly matter are those voiced by the majority of the Washington State Supreme Court when it decided to adopt the program in 2012.[162]

In the 2012 Order, then Chief Justice Barbara Madsen addressed the hopes expressed by supporters of the program who believed the LLLT program "should be a primary strategy to close the [j]ustice [g]ap for low and moderate income people with family related legal problems."[163] In response, Justice Madsen emphasized the need to "be careful not to create expectations that adoption of this rule is not intended to achieve."[164] She provided, "depending upon how it is implemented . . . [the program] holds promise to help reduce the level of unmet need for *low and moderate income* people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome."[165] Justice Madsen referred to the

161. Letter from Christina A. Meserve, *supra* note 160, at 1; Letter from Dan Bridges, *supra* note 144, at 6; *see also* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 2, at 3 (discussing this concern and noting that many LLLTs are paralegals and most paralegals in Washington are female).

162. 2012 Order for APR 28, *supra* note 5, at 1-2.

163. *Id.* at 6.

164. *Id.*

165. *Id.* (emphasis added).

program as a "baby step" in meeting the legal needs of indigent Washingtonians but admitted in the Court Order that "[n]o one has a crystal ball[,]" signifying that even the Court could not say for sure what the program would become.[166]

Some thought LLLTs were meant to work as solo practitioners rather than in law firms, that they were meant to provide services in rural communities where attorneys are less prevalent, or that they would work for nonprofit organizations or legal aid programs.[167] Assuredly, there were various discussions regarding the program before and during its implementation, so such beliefs may rightfully stem from when and how the program was initially or varyingly pitched.[168] However, as impartial reviewers without the benefit of being in the room when the parties voiced their intentions, like a contract, we must look to the four corners of the Court's Order adopting APR 28 and APR 28 itself to determine the essential components of the LLLT program.[169]

As the Court did not limit the LLLT's job prospects—by order or by rule—to rural areas or solo offices, it is assumed that it did not intend to limit the LLLT in these ways.[170] In fact, the rule differentiates between that which a stand-alone LLLT can do and that which a LLLT may do with attorney supervision, demonstrating it was not out of the question that LLLTs would work with attorneys.[171] The prospect of LLLTs working in rural communities has been discussed by the LLLT Board,[172] but was

166. Schaefer, *supra* note 6; 2012 Order for APR 28, *supra* note 5, at 8.

167. *See* Letter from Dan Bridges, *supra* note 144, at 2; Telephone Interview 11, *supra* note 102, at 5; Zoom Interview 12, *supra* note 24, at 6, 9.

168. *See* Bridges, *supra* note 102, at 48.

169. *See* Zoom Interview 13, *supra* note 19, at 2-3 (noting that when a group makes a decision, it is difficult to determine intent—perhaps some believed the program would only be for low-income people, while others thought it would also serve moderate-income people and that LLLTs would be able to work wherever they wanted—the most important thing is what the rule says and the rule did not limit who they could serve or where).

170. *See id.*

171. *See* 2012 Order for APR 28, *supra* note 5, at 8-9.

172. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 2, at 2-3; Telephone Interview 5, *supra* note 4, at 1; Zoom Interview 1, *supra* note 22, at 4.

not fully addressed in the Court's Order,[173] and the prospect of LLLTs working for nonprofit or legal aid organizations was contemplated as a possibility in the Court's Order, though not listed as a requirement.[174] Therefore, in summary, the LLLT program was adopted with the hope that it would be implemented in such a way that it would serve as a baby step in reducing the unmet legal needs of low- and moderate-income individuals in Washington.[175]

B. Attained

1. Quality Legal Services

Using the 2012 Court Order's anticipations of the LLLT program as a measuring stick, we now turn to whether and to what extent the program can be considered to have succeeded in providing quality services to low- and moderate-income individuals. Quality concerns raised against the LLLT program included that nonlawyers would not be able to provide quality legal services to clients, that clients would be getting second-tier services, and that clients would not be protected upon LLLT malpractice.[176] To combat quality concerns, APR 28 imposed safeguards, such as stringent educational and supervised experiential requirements, a professional responsibility exam, and proof of malpractice insurance.[177] Further, to dispel concerns that LLLTs would go beyond their scope of practice and harm clients, candidates were taught not only what they could do, but also how to recognize that which went beyond their scope of practice.[178]

While some LLLTs felt the 3,000 hours of legal experience should specifically be in family law rather than in any practice

173. *See* 2012 Order for APR 28, *supra* note 5, at 9 (mentioning rural areas only to say that attorneys in these areas are "barely able to scrape by[,]" so "[d]oing reduced fee work through the Moderate Means program . . . will not be a high priority.").

174. *See* 2012 Order for APR 28, *supra* note 5, at 9.

175. *See id.* at 1-2, 4.

176. *See supra* notes 119-21, 134, 154-55 and accompanying text; Zoom Interview 8, *supra* note 44, at 2, 4; Telephone Interview 11, *supra* note 102, at 8; Zoom Interview 12, *supra* note 24, at 3.

177. *See supra* notes 75-83, 90 and accompanying text.

178. Crossland & Littlewood, *supra* note 7, at 617; Zoom Interview 8, *supra* note 44, at 2; Telephone Interview 5, *supra* note 4, at 4.

area, they generally felt the curriculum and requirements well-equipped them to serve their clients in family law.[179] Some believed they were even better equipped than new family law attorneys they interacted with and one noted having to educate some newer attorneys about how things work in family law.[180] Supporting their belief, family law professors who created and taught the curriculum echoed that the fifteen family law credits better equipped LLLTs in family law than most law school graduates who only take three credits.[181] A March 2020 report of the LLLT program found "[o]ver 50% of all LLLTs have at least [ten] years of substantive law related experience."[182] Interviewed family law professors noted such long-time paralegals were even better qualified.[183] The report also indicated that, to that date, not a single LLLT had been disciplined.[184]

2. Serving the Intended Target

While some, including a member of the Washington State Supreme Court, have asserted the belief that LLLTs would only serve low-income individuals,[185] those involved in the initial

179. Zoom Interview 3, *supra* note 23, at 1; Zoom Interview 4, *supra* note 23, at 2.

180. Zoom Interview 3, *supra* note 23, at 1; Zoom Interview 4, *supra* note 23, at 2.

181. *See* Zoom Interview 8, *supra* note 44, at 2; Zoom Interview 9, *supra* note 24, at 1; Telephone Interview 5, *supra* note 4, at 3-4.

182. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 3, at 4.

183. Zoom Interview 9, *supra* note 24, at 2; Zoom Interview 8, *supra* note 44, at 2.

184. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 3, at 4.

185. Again, note that Justice González was a part of the majority decision to adopt APR 28 in 2012, but authored the dissent to expansion in 2019. *See* Order to Expand APR 28, *supra* note 99, at 1-2 (González, J., dissenting). Interviewees discussed Justice González's public statement regarding the belief that the LLLT would only serve low-income individuals. *See* Zoom Interview 9, *supra* note 24, at 3 (noting one of the schisms on the Court was whether LLLTs were only meant to serve low-income people); Telephone Interview 5, *supra* note 4, at 7. In his dissent, Justice González stated, "The LLLT program was conceived as an effort to address the unmet civil legal needs of *low-income* Washingtonians" and "[i]t did not take long to realize that the business model adopted by the LLLT program was incompatible with meeting the needs of *low-income* individuals . . . ." Order to Expand APR 28, *supra* note 99, at 1-2 (González, J., dissenting) (emphasis added). However, the majority decision in 2012 discussed LLLTs serving moderate-income individuals as well. 2012 Order for APR 28, *supra* note 5, at 1, 4, 6. This suggests even the majority was unclear in 2012 about who the program would serve. Obviously, this important

creation and proposal of the program insist it was always the intent for the LLLT to serve low- and moderate-income individuals.[186] Again, supporting the latter is the 2012 Order in which Chief Justice Madsen cites both low- and moderate-income individuals as the intended targets.[187]

In 2020, the LLLT Board conducted a survey of twenty responding LLLTs, who reported serving a total of 1,527 paid clients mostly within 0-300% of the federal poverty level.[188] Eighty-five percent of the respondents reported serving clients within 0-200% of the federal poverty level.[189] Twenty-nine percent signed up for a WSBA program in which they agreed to reduce their fees by half when serving clients within 200-250% of the federal poverty level.[190] The report found many LLLTs offer free initial consults, sliding scale fees, and unbundled services, and thirty-four percent of the twenty respondents reported serving as many as 929 pro bono hours—more than attorneys were on average reporting.[191] LLLTs provide anecdotes of their clients praising them for providing services at affordable rates, and they report serving low- and moderate-income individuals that, for the most part, cannot afford an attorney.[192]

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discrepancy among the Court in particular would alter the view of whether the LLLT was succeeding.

186. Telephone Interview 5, *supra* note 4, at 7; Zoom Interview 1, *supra* note 22, at 2-3; *see also* Zoom Interview 9, *supra* note 24, at 3-4. Interviewee 9 discussed how, from the beginning, he talked to LLLTs about a business plan, and it was clear LLLTs would need to serve middle-income as well as low-income individuals in order to earn a salary and pay rent. *Id.* at 3. He noted it was ridiculous to think that LLLTs can only serve low-income individuals and that they should be expected to do more pro bono work than lawyers. *Id.* at 4. He also noted that LLLTs did in fact report doing more pro bono work than lawyers and emphasized the need to balance access to justice with the fact that LLLTs need to be able to make a living wage. *Id.* at 4, 6.

187. *See* 2012 Order for APR 28, *supra* note 5, at 1, 4.

188. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 3, at 3.

189. *Id.* at Bookmark 3, at 4.

190. *Id.*

191. *Id.*; Zoom Interview 2, *supra* note 4, at 1; Zoom Interview 9, *supra* note 24, at 2; *see also* Zoom Interview 8, *supra* note 44, at 3 (discussing how there was only one LLLT in her area, but she noticed the LLLT was very involved in the free advice clinic, as every time she went, she saw the LLLT there); Michelle White, Comment to Washington State Bar Association, FACEBOOK (May 12, 2020), [https://perma.cc/6385-49RH] (most LLLTs she knows do a lot of flat fee, reduced rates, and pro bono work).

192. *See* Zoom Interview 2, *supra* note 4, at 1-2; Zoom Interview 3, *supra* note 23, at 1; Zoom Interview 4, *supra* note 23, at 2; Zoom Interview 7, *supra* note 138, at 2; *see also*

LLLTs report being busy and that the LLLTs they know are busy.[193] Some are working with technology and different business models to find the most efficient way to serve their clients.[194]

While these reports and testimonials provide some reassurance that there are people being helped by LLLTs, it has been suggested that anecdotal stories do not provide a sufficient metric of success to determine the new profession's overall impact.[195] While LLLTs and LLLT Board members express confidentiality concerns in collecting client data,[196] others assert LLLTs could collect data without providing specifics in order to more concretely gauge the program's success.[197] However, notably, nowhere was it mandated that LLLTs be required to report their prices or information regarding their clientele.[198]

A 2018 law review article suggested the original LLLT model could work to serve moderate-income individuals at a rate more affordable than attorneys but would come up short in providing services at a rate low-income individuals can afford.[199] The assertion was based on interviews and a study of thirty-six respondents from the first two cohorts of LLLTs and LLLT candidates.[200] The article claimed that while LLLTs "[m]ost frequently . . . reported that they planned to work with both low- and moderate-income clients[,]" a number of elements would inhibit their ability to charge prices low-income individuals can

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Donaldson, *supra* note 94, at 31-32 (providing a LLLT's positive experience with a client). I say "for the most part" because one LLLT stated that a good half of her clients fire their lawyers and hire her due to the preference of using her services. Zoom Interview 6, *supra* note 97, at 3.

193. Zoom Interview 3, *supra* note 23, at 1, 4.

194. Zoom Interview 4, *supra* note 23, at 5; Zoom Interview 6, *supra* note 97, at 2.

195. *See* Bridges, *supra* note 102, at 50; Telephone Interview 11, *supra* note 102, at 5; Zoom Interview 12, *supra* note 24, at 8-9.

196. Zoom Interview 4, *supra* note 23, at 4 (noting that she told her clients that if they wanted to, they could fill out a form providing information that would be used for LLLT data, but she did not and could not force them to due to confidentiality concerns); Telephone Interview 5, *supra* note 4, at 8.

197. Zoom Interview 12, *supra* note 24, at 8-9; Telephone Interview 11, *supra* note 102, at 5.

198. *See* 2012 Order for APR 28, *supra* note 5; WASH. ADMISSION TO PRAC. R. 28.

199. Donaldson, *supra* note 94, at 61, 65.

200. *Id.* at 17.

afford: solo practitioners will incur office overhead no different than lawyers, those working in law firms will have to sustain their salaries while making their employment worthwhile to law firms, and many in the first cohorts were previously paralegals that aspired to bring in higher salaries as LLLTs.[201] While these potential inhibitors to serving low-income individuals are worthy of consideration, it is important to note that the article surveyed LLLTs and candidates that either had not yet entered the profession or had not been in it for very long.[202] The thirty-six respondents' uncertainty was exemplified in their doubt regarding how to price their services.[203]

Nonetheless, considering many respondents reported a desire "to expand access to justice in family law," the article remained optimistic that LLLTs could serve more low-income individuals with some changes to the LLLT model.[204] One of which was allowing LLLTs to appear in court and negotiate with opposing counsel so they may provide their clients "a more comprehensive, seamless, and affordable experience . . . ."[205] Recall that this change was implemented in 2019.[206] Another suggestion was that LLLTs could serve moderate- and high-income individuals to subsidize their taking on more low-income clients.[207] Still, the article noted, "[i]f the model can increase access for moderate-income legal consumers who could not previously afford civil legal services to meet their needs, the model would do its part to close the justice gap."[208]

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201. *Id.* at 38, 41, 49-50, 62. The article also noted that while most of the interviewees cited a desire to "expand access to justice in family law [as one of their reasons for becoming a LLLT], they still predominantly intend to target clients who can afford to pay their rates—rates lower than attorneys' fees but not low enough for low-income populations to afford." *See id.* at 65; *see also supra* notes 110-13 and accompanying text (the Family Law Section expressing similar concerns with LLLT office overhead).

202. Donaldson, *supra* note 94, at 17 (stating the invitations to participate in her study were sent in fall 2015). Recall that the first LLLT did not enter the legal profession until mid-2015. *See supra* note 92 and accompanying text.

203. Donaldson, *supra* note 94, at 20, 40.

204. *Id.* at 59-60, 65, 67, 71; *see also* Zoom Interview 2, *supra* note 4, at 1-2 (stating LLLTs are passionate not only about providing services at a lower rate, but also about volunteering a lot of their time).

205. Donaldson, *supra* note 94, at 67-68.

206. *See supra* notes 96-100 and accompanying text.

207. Donaldson, *supra* note 94, at 68.

208. *Id.* at 72.

Importantly, in considering whether the LLLT program has succeeded in serving its intended target, we must reflect on what we have: anecdotal stories, pro bono and clientele reports, studies, and survey and interview responses. And we must still acknowledge that which is lacking, as LLLTs were never made to report on their services and the program never specifically defined how it would gauge its success.[209]

V. THE DEMISE OF THE LLLT PROGRAM

In the Washington State Supreme Court's letter informing the Chair of the LLLT Board (and others) of the Court's majority decision to sunset the program, the Court cited two main reasons: (1) the cost of the program and (2) the lack of interest in the program.[210] While those involved, and outsiders alike, may speculate about other potential reasons for the program's sunsetting, such as a desire to maintain a monopoly on legal services, avoid change, or prevent diversion from law school, it is important to first consider the two reasons afforded by the Court that chose to implement this program in the first place. This section works to provide that analysis.

A. Cost of the Program

1. Cost Neutral in "A Reasonable Period of Time"

From the inception of the LLLT program, there was controversy about who should fund the program and for how long they should be required to do so. When the Washington State Supreme Court ordered the adoption of the program, it ordered the WSBA to subsidize it.[211] Washington requires its attorneys to be members of the Bar, thus, every lawyer in Washington was made to pay for a program that some believed would serve as their

209. *See infra* Section VI.D. for a deeper discussion on the importance of gauging success.

210. Letter Notification of Sunsetting, *supra* note 11, at 1.

211. *See* 2012 Order for APR 28, *supra* note 5, at 1-2 (Owens, J., dissenting).

competition.[212] In fact, in Justice Owen's dissent to the Court's 2012 Order, she stated that making the WSBA pay for the program was not fair, that the Court was imposing a tax on lawyers, and that doing so would reduce the amount the WSBA could budget for other programs.[213]

However, the program was not supposed to be a burden on the Bar forever; rather, from its inception, the program was intended to be "financially self-supporting within a reasonable period of time."[214] This was to be done through LLLT licensing fees.[215] In its 2012 Order, the Court asserted its "confiden[ce] that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of [LLLT]s will be cost-neutral to the WSBA and its membership[,]" though it did not specify at what time.[216] Justice Owens felt the program's ability to be self-sustaining would depend, in large part, on the number of licenses attained, and suggested that even the Practice of Law Board was unsure LLLT fees alone would suffice to attain cost-neutrality, since it also mentioned a reliance on "commitments from the WSBA."[217]

At the time of sunsetting, the WSBA had provided the program nearly $1.4 million and the program was years away from attaining cost neutrality.[218] Just before the sunsetting, the LLLT Board estimated that with an additional $986,588.65 and eight more years, the program would produce enough licenses to be self-sustaining.[219] To some, the $1.4 million already expended likely represented funding taken away from other assistance

212. Zoom Interview 3, *supra* note 23, at 2; Zoom Interview 6, *supra* note 97, at 3 (believing it to be a design flaw to force attorneys to subsidize something they did not accept and believed would serve as competition); Zoom Interview 8, *supra* note 44, at 4 (stating the problem is attorneys and their unrealistic fear that LLLTs would take work away from them); Zoom Interview 9, *supra* note 24, at 3 (noting concerns from family lawyers that LLLTs would take their livelihood); Telephone Interview 16, *supra* note 24, at 3 (noting the LLLT appeared as a financial threat to family lawyers).

213. 2012 Order for APR 28, *supra* note 5, at 1-2 (Owens, J., dissenting).

214. WASH. GEN. R. 25(b)(2)(E).

215. 2012 Order for APR 28, *supra* note 5, at 11.

216. *Id.*

217. *Id.* at 2-3 (Owens, J., dissenting).

218. *See* Clark PowerPoint, *supra* note 13, at slides 2, 5, 13.

219. *See id.* at slide 8.

programs better able to provide access to justice than the mere thirty-eight active LLLTs at that time.[220] To others, the $1.4 million amounted to one percent of the WSBA's total budget and was not that much considering Washington had to form the program from scratch.[221] Justice Madsen, a major supporter of the program,[222] also noted that several years ago, the WSBA informed the Court that it takes approximately $1.4 million to investigate and prosecute ten cases of UPL, which was a driving force in "opening the practice of law" and "expand[ing] the number of people who can be trained . . . ."[223] While opponents felt eight years was plenty of time for the program to achieve self-sustainability and that asking for a total of sixteen years was violating the initial rule requiring it to achieve such status,[224] proponents pointed to the fact that LLLTs had only been in the profession for five years, which was not nearly enough time for the program to build the momentum necessary to be cost neutral, considering how other professions have developed over time.[225]

A member of the LLLT Board admitted it was a fair criticism from the WSBA that the program was taking lawyer license fees but stated that no one knew how much money the program would take and that a disclaimer was provided to the Court prior to the adoption of the program of such lingering uncertainty inherent

220. *See generally supra* Section III.A. Recall that the Family and Elder Law Sections of the WSBA suggested to the Court that resources could be better spent on other programs and efforts rather than the LLLT program. *See supra* Section V.A. Justice Owens expressed similar concerns about reducing the budget for other programs. *See* 2012 Order for APR 28, *supra* note 5, at 1-2 (Owens, J., dissenting).

221. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 15, slide 4; Zoom Interview 2, *supra* note 4, at 4; Telephone Interview 5, *supra* note 4, at 6.

222. *See generally* Letter from J. Barbara Madsen, *supra* note 65.

223. May 12, 2020 Meeting, *supra* note 8, at 00:42:32-00:43:31. However, Justice Madsen admitted she did not know how many UPL cases were related to work LLLTs were already doing or work the LLLT Board was proposing LLLTs be allowed to do. *Id.* at 00:43:31-00:43:53. LLLT Board member Nancy Ivarinen responded suggesting there was at least some overlap. *See id.* at 00:43:53-00:44:30.

224. *See* Clark PowerPoint, *supra* note 13, at slide 13; *see also* Letter from Daniel D. Clark, Treasurer & Dist. 4 Governor, Washington State Bar Ass'n Bd. of Governors, to CJ. Stephens, Washington State Sup. Ct. 4 (May 12, 2020) (on file with the Author).

225. May 12, 2020 Meeting, *supra* note 8, at 02:02:42-02:03:34 (discussing nurse practitioners); *see also* Zoom Interview 2, *supra* note 4, at 3-4.

with any new program.[226] Perhaps this is why the Court never set a specific date for the program to be cost neutral.

2. Poor Guardian of Mandatory Fees

A member of the BOG felt the LLLT Board was a poor guardian of mandatory fees, and that it spent money with no sense of accountability.[227] It costs the WSBA "just shy of $10,000" to hold the LLLT bar exam regardless of whether there is one or one thousand test-takers, and it administers the exam twice a year.[228] A member of the BOG believed that with the dwindling number of test-takers, the LLLT Board might consider only having one exam per year.[229] Further, the LLLT Board researched the possibility of expanding LLLTs into practice areas such as bankruptcy and immigration law, which were areas of high need but governed by the federal courts, resulting in unfeasibility and the inevitable waste of time and money.[230] There were inquiries as to why the LLLT Board needed to meet monthly and take retreats that required travel and lodging expenses when it was only tasked with overseeing one program, as opposed to several, like the BOG.[231] To bring in more money from LLLTs themselves, the BOG wanted LLLTs to pay the same bar dues as lawyers, but the idea was rejected in favor of the argument that LLLTs are more limited than lawyers, so their dues should reflect such limitations.[232]

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226. Telephone Interview 5, *supra* note 4, at 9.

227. *See* Bridges, *supra* note 102, at 50; *see also* Zoom Interview 12, *supra* note 24, at 3, 4.

228. Bridges, *supra* note 102, at 48; Letter from Dan Bridges, *supra* note 144, at 4-5.

229. Zoom Interview 12, *supra* note 24, at 3.

230. *See id.* at 7; Letter from Dan Bridges, *supra* note 144, at 5; Telephone Interview 11, *supra* note 102, at 2; Zoom Interview 9, *supra* note 24, at 4 (discussing the immense need in immigration law, but how there would need to be a federal change to allow LLLTs to serve as advocates in that arena).

231. *See* Clark PowerPoint, *supra* note 13, at slide 14; *see also* Letter from Dan Bridges, *supra* note 144, at 4; Telephone Interview 11, *supra* note 102, at 3; Zoom Interview 12, *supra* note 24, at 6.

232. Telephone Interview 11, *supra* note 102, at 4 (believing LLLTs should pay the same dues as lawyers because they are not yet self-sufficient and their dues should reflect that goal); Zoom Interview 12, *supra* note 24, at 6 (believing LLLTs should pay the same dues as lawyers, because even though they are more limited, they still have access to the same resources that lawyers do). *See generally License Fees*, WASH. STATE BAR ASS'N,

On the other hand, the LLLT Board felt that it was the BOG that was in charge of overseeing the funding for the program and that it merely lived within its means.[233] The LLLT Board needed to meet more often because it was developing a new program which required a lot more work and time.[234] Notably, several months before the program's sunsetting, the LLLT Board did attempt to mitigate the program's financial burden on the WSBA.[235] The Board asked the BOG to allow the LLLT education to be run through WSBA technology, which it believed would be a cost benefit to the Bar.[236] In theory, this change would allow the cost of tuition to go directly to the program, rather than to the law school or community colleges acting as middle-men curriculum providers.[237] This revenue could supplement LLLT license fees, which had not yet allowed the program to attain self-sufficiency.[238] Yet, in January 2020, the BOG voted twelve-one against the proposal, listing antitrust reasons and the belief that it would present a financial loss to the WSBA, rather than a gain.[239]

Regardless, the true issue did not seem to be money per se, but rather, whether the program was producing the results necessary to justify the money already expended and continued expenditure. One member of the BOG stated that he did not necessarily care that the program ever achieved cost neutrality, as the goal is to serve the public.[240] So, if the program costs $50,000

[https://perma.cc/NXL8-Q8Q5] (Oct. 8, 2021) (listing the fees for attorneys, LLLTs, and other paraprofessionals in Washington).

233. Telephone Interview 5, *supra* note 4, at 6.

234. May 12, 2020 Meeting, *supra* note 8, at 01:56:45-01:57:20; Zoom Interview 1, *supra* note 22, at 2 (discussing the hard work that occurred during retreats); Telephone Interview 5, *supra* note 4, at 6 (discussing the time that went into creating the foundation of the program).

235. *See* May 12, 2020 Meeting, *supra* note 8, at 01:17:42-01:18:01.

236. *See id.* at 01:17:05-01:18:37, 01:54:30-01:54:54.

237. *Id.* at 01:17:53-01:18:36.

238. *See supra* Section V.A.1.

239. May 12, 2020 Meeting, *supra* note 8, at 01:18:00-01:18:15; *see also id.* at 1:22:53-01:23:41 (BOG Treasurer also noting a lack of financial information); *id.* at 01:21:10-01:21:23 (BOG President also noting "that the private market should be able to sustain [the education] and in fact the private market has been able to sustain [it]"); Zoom Interview 12, *supra* note 24, at 11 (noting also that the WSBA is in the business of licensing—not training—lawyers and LLLTs, so it was not within its mission or scope to do so).

240. Zoom Interview 12, *supra* note 24, at 13.

or $75,000 per year, that would be a great use of Bar dues, so long as the public is actually being served.[241] The question was whether the LLLT program was making or could make the difference the money intended it to even with an additional one million dollars and eight years.[242] Inevitably, a majority of the Court felt the program did not warrant the additional expenditure.[243]

B. Small Number of Licenses

1. Efforts to Promote the Program

One reason cited for the lacking number of LLLTs was that the program was not properly promoted. Several interviewees and others have suggested that increasing public awareness of the program and better marketing it as a potential career and resource would have aided in its success.[244] However, LLLT Board members were caught up in creating the foundation of the program, and more pertinently, they worried about promoting the LLLT as a potential resource to those in need of legal services when they did not have enough LLLTs to provide such services.[245] They wanted to get more LLLTs in the pipeline before increasing marketing.[246]

Of course, there were efforts to promote the program as a potential career. The Chair of the LLLT Board spoke on a paralegal podcast, at events, and at almost all of the Washington

241. *Id.*

242. *See generally* Clark PowerPoint, *supra* note 13 (expressing doubt that the additional expenditure and time would generate the interest necessary to allow the program to be self-sustaining and emphasizing the low numbers achieved up until this point).

243. *See* 2012 Order for APR 28, *supra* note 5, at 11.

244. Zoom Interview 2, *supra* note 4, at 5; Zoom Interview 3, *supra* note 23, at 2; Telephone Interview 5, *supra* note 4, at 6; Zoom Interview 6, *supra* note 97, at 3; Zoom Interview 7, *supra* note 138, at 2-3; Zoom Interview 9, *supra* note 24, at 2-3; Telephone Interview 11, *supra* note 102, at 2; Rowe, *supra* note 145 (noting that the public has "little idea" of what the LLLT is and "[p]ublic outreach is key"); Synth Surber, Comment to Washington State Bar Association, FACEBOOK (May 12, 2020), [https://perma.cc/6385-49RH] ("LLLT needs to be promoted more.").

245. Zoom Interview 2, *supra* note 4, at 5; Zoom Interview 3, *supra* note 23, at 2 (stating they were worried that because there were so few LLLTs, they would "bait and switch" those in need of legal services); Telephone Interview 5, *supra* note 4, at 6.

246. Zoom Interview 2, *supra* note 4, at 5; Telephone Interview 5, *supra* note 4, at 6.

community colleges with paralegal programs to tell paralegal candidates that if they did one more year of schooling for an additional $3,000 they could broaden their business horizons by becoming LLLTs.[247] The LLLT Board sent a representative to a statewide high school counselor meeting to let the counselors know about the LLLT as a potential career option to promote to students.[248] Further, discussed in the LLLT Board's March 2020 report to the Court were LLLT "rack cards," existing as "the first print materials created specifically for the public to raise awareness of LLLT services."[249] At that time, 500 cards had been distributed to locations such as libraries and courthouses.[250] Although there were approximately 275 people working toward the license at the time of sunsetting, there were still only thirty-eight active LLLTs,[251] so perhaps such educational efforts earlier on and to a greater extent would have resulted in more LLLTs providing services in Washington by the time of sunsetting.

2. LLLT Curriculum and Requirements

While the LLLT requirements were created to diminish quality concerns, some may have been so stringent that they deterred potential candidates.[252] First, to complete the 3,000 hours of substantive legal experience, it would take the candidate a minimum of eighteen months of working forty-hour weeks, and that is assuming all eight hours of every working day are approved

247. Telephone Interview 5, *supra* note 4, at 7-8; Zoom Interview 3, *supra* note 23, at 1 (stating that she discovered the LLLT program at an event where the Chair spoke, which solidified her decision to become a LLLT).

248. Telephone Interview 5, *supra* note 4, at 7.

249. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 4, at 5.

250. *Id.*

251. *See supra* notes 13-15 and accompanying text.

252. *See* Donaldson, *supra* note 94, at 33-34 (discussing how some interviewed non-paralegal LLLT candidates expressed "doubts and frustration about the ability to achieve [the LLLT] prerequisites before taking the exam[]" and noting that if these doubts were presented by people that inevitably opted to pursue the license, they could have deterred those otherwise interested in the license that opted not to pursue it).

by the supervising attorney as constituting "substantive" work.[253] Meaning, if the candidate showed up to work nine hours, but only five and a half were considered by the supervising attorney to be substantive, the timeline for reaching the 3,000-hour threshold would only be prolonged.[254] While attaining thorough experience is necessary to protect the public, this daunting time commitment, initially set by the LLLT Board in exercising "an abundance of caution[,]" actually served as an unnecessary deterrent to people interested in pursuing the license.[255] The LLLT Board believed the same benefit of thorough training could be experienced with 1,500 hours, and proposed this change in its March 2020 report to the Court.[256]

Significantly, when Arizona's task force proposed the Legal Paraprofessional ("LP") to the Arizona Supreme Court, it stated that it "deliberately did not pattern" its program on the LLLT, "in part because of [the] program's high experiential learning requirement."[257] Utah only requires its Licensed Paralegal Practitioner ("LPP") to complete 1,500 substantive hours,[258] and Oregon is considering the same for its Licensed Paraprofessional.[259] Arizona and Utah require some of the hours to be in the specific practice area in which the licensee plans to work,[260] while Washington made no such distinction.[261] Lessening the hours to 1,500 earlier on would have made the

253. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 3, at 4; Zoom Interview 2, *supra* note 4, at 5 (defining "substantive hours" as work otherwise performed by an attorney).

254. This example was provided by Interviewee 2. Zoom Interview 2, *supra* note 4, at 5.

255. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 13.

256. *Id.*; Zoom Interview 1, *supra* note 22, at 8; Telephone Interview 5, *supra* note 4, at 4.

257. Moran, *Article on Arizona Nonlawyer Licensees*, *supra* note 9.

258. *Licensed Paralegal Practitioner*, *supra* note 9; MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 13.

259. Tashea, *supra* note 10.

260. ARIZ. CODE OF JUD. ADMIN. § 7-210(E)(3)(b)(9)(a)(iv) (2021) (requiring applicants entering with the education combination under (9)(a) to obtain one year of substantive experience under the supervision of an attorney in the area of practice sought); *Licensed Paralegal Practitioner*, *supra* note 9 (requiring 500 of the 1,500 hours be in family law when that is the area sought, or 100 of the hours be in debt collection or forcible entry and detainer if those are the areas sought).

261. *See* WASH. ADMISSION TO PRAC. R. 28(B)(7), app. at regul. 9; REPORT: THE FIRST THREE YEARS, *supra* note 79, at 15.

LLLT license more attainable, attracting more candidates. Further, having a number of those hours in family law, as suggested by existing LLLTs,[262] would have aligned with the quality initiative and even better prepared LLLTs for practice.

Second, while earning the LLLT license costs much less than the average student pays to go to law school, financial aid was not made available to LLLT candidates for the fifteen credits of family law, which has been estimated to cost approximately $3,750.[263] The LLLT Board hoped to be able to obtain financial aid for candidates throughout their LLLT education, but because it existed as a new program and because of the way it was offered, doing so was beyond the Board's control.[264] This deficiency certainly impacted the program's numbers, as it limited the license to those financially able to pay for the family law credits on the front end.[265]

Third, the program's waiver process only allowed paralegals to waive the required associate degree and forty-five core credits if they had ten or more years of experience.[266] Many of the first cohorts and a significant portion of existing LLLTs were paralegals that entered the program through the waiver process.[267] In its March 2020 report to the Court, the LLLT Board requested that the Court consider lessening the ten-year waiver requirement, noting Utah set its waiver requirement at seven years.[268] The Board hoped this change would bring in more paralegals

262. *See supra* note 179 and accompanying text.

263. REPORT: THE FIRST THREE YEARS, *supra* note 79, at 25-26. *But see* Zoom Interview 2, *supra* note 4, at 6 (estimating the LLLT education to cost closer to $5,000).

264. REPORT: THE FIRST THREE YEARS, *supra* note 79, at 25; Zoom Interview 2, *supra* note 4, at 6.

265. Donaldson, *supra* note 94, at 34; THOMAS M. CLARKE, NAT'L CTR. FOR STATE CTS. & REBECCA L. SANDEFUR, AM. BAR FOUND., PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 8 (2017) [hereinafter PRELIMINARY EVALUATION OF THE LLLT PROGRAM] (citing a lack of financial aid as a potential deterrent).

266. *Limited-Time Waiver*, *supra* note 78.

267. *See* Donaldson, *supra* note 94, at 57 (noting twenty-nine of the thirty-six interviewed LLLTs and LLLT candidates previously or currently worked as paralegals); MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 3, at 4 (noting over fifty percent of existing LLLTs have ten or more years of substantive legal experience); Zoom Interview 9, *supra* note 24, at 2; Zoom Interview 8, *supra* note 44, at 2.

268. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 14.

interested in the program and aid in numbers.[269] Without the change, paralegals with less than ten years of experience would have to take on more of the required curriculum, a commitment that surely would not be as appealing to those with seven, eight, or nine years of experience.[270]

Fourth, it is important to consider that LLLT candidates must be willing to take a risk in pursuing a profession that is the first of its kind, as they lack guidance on whether it will be fruitful for them. The financial and time commitments only increase the risk candidates must be willing to take.[271] One LLLT stated that some people did not become LLLTs because they were waiting for changes to be made to the program, for its tweaks to be worked out, and to see how LLLTs fared in the workforce[272] (i.e., for the risk to subside). This wait-and-see approach was surely another culprit leading to less LLLTs than intended in the five years in which the program was producing licenses before the sunsetting.

3. Limited to Only One Practice Area

The LLLT Practice Rule, APR 28, never mentions family law.[273] It merely states what LLLTs are permitted to do in "approved practice areas."[274] Listed as the first responsibility of the LLLT Board is "[r]ecommending practice areas of law for LLLTs, subject to approval by the [] Court[.]"[275] From this language, there is no doubt that when the Court implemented the

269. *See id.* at Bookmark 5, at 6; Zoom Interview 14 with Wash. State Bar Ass'n Exec. Leadership Team Member 1-2 (Jan. 8, 2021).

270. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 5, at 6 (describing the ten years as a barrier keeping experienced paralegals from entering through the waiver process).

271. Donaldson, *supra* note 94, at 33; Zoom Interview 4, *supra* note 23, at 3.

272. Zoom Interview 4, *supra* note 23, at 3; *see also* Zoom Interview 6, *supra* note 97, at 1 (stating that she became a LLLT after seeing the results of Washington's Civil Legal Needs Study but discussing how if she had read APR 28 more finely, she might have waited for them to make the program more robust before doing it).

273. Family law and "domestic relations" are mentioned in the Appendix of APR 28, which was adopted August 20, 2013, and amended several times. *See* WASH. ADMISSION TO PRAC. R. 28 app. at regul. 2(B). But family law is not mentioned in APR 28, as appended to the 2012 Court Order adopting it, nor is it in the current version of APR 28. *See generally* 2012 Order for APR 28, *supra* note 5, at app. 1-8; WASH. ADMISSION TO PRAC. R. 28.

274. WASH. ADMISSION TO PRAC. R. 28(A), (B)(4), (C)(2)(b)-(c).

275. WASH. ADMISSION TO PRAC. R. 28(C)(2)(a).

program, it anticipated that LLLTs might serve in areas beyond family law. Proposers asserted it was always the mission of the LLLT program to expand into other practice areas, and for existing LLLTs to be able to return and complete a few courses to get certified in another area if they wished.[276]

Accordingly, pursuant to APR 28, the LLLT Board made proposals to the Court to expand into areas such as consumer, money, and debt, low-level estates (which they called "family documents"), elder, unemployment, residential tenant and debt assistance, administrative law, and eviction and debt assistance.[277] The Board also discussed LLLTs helping with matters such as stepparent adoptions and adult guardianships for parents of adults with special needs.[278] Immigration and bankruptcy were also discussed with the Court, though they were unfeasible due to issues with federal preemption.[279] When deciding which practice areas to propose the LLLT Board asked: (1) Is there a need? (2) Can we properly educate, prepare, and regulate LLLTs in this area? (3) Can LLLTs make a living with this practice area (i.e., is it a good adjunct to a LLLT practice)?[280]

In considering need, the LLLT Board looked to the results of Washington's 2003 Civil Legal Needs Study, and later, a 2015 study regarding specifically low-income individuals.[281] It worked closely with subject area experts, volunteer lawyer programs, legal clinics, and legal aid groups to see who was

276. Zoom Interview 1, *supra* note 22, at 4-5.

277. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmarks 11, 12 (proposing administrative law, residential tenant and debt defense assistance, and eviction and debt assistance); Zoom Interview 1, *supra* note 22, at 4 (discussing "family documents" and administrative law); Zoom Interview 2, *supra* note 4, at 2 (discussing consumer, money, and debt and unemployment law); Zoom Interview 9, *supra* note 24, at 4 (discussing elder law).

278. E-mail from Nancy Ivarinen, Ltd. License Legal Technician Bd. Member, to Lacy Ashworth, Ark. L. Rev. (Apr. 18, 2021, 1:42 CT) (on file with the Author) (Ivarinen's specialty on the LLLT Board was proposing new practice areas).

279. *Id.*; *see also* Zoom Interview 9, *supra* note 24, at 4 (discussing the immense need in immigration law and the federal roadblock); Telephone Interview 11, *supra* note 102, at 2 (discussing immigration and bankruptcy law); Zoom Interview 12, *supra* note 24, at 7 (discussing bankruptcy law).

280. Zoom Interview 1, *supra* note 22, at 4-5.

281. Telephone Interview 5, *supra* note 4, at 5; Zoom Interview 1, *supra* note 22, at 4. *See generally* CIVIL LEGAL NEEDS STUDY UPDATE COMM., WASH. STATE SUP. CT., 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015).

coming through their doors.[282] For the most part, the Board had the support of these groups.[283] The Board was also approached by legal professionals that felt LLLTs would be able to aid in their area.[284] For instance, the Chief Administrative Law Judge asked the Board for LLLTs to aid in administrative law.[285] Despite proposals being made every year, the Court inevitably rejected expansion into new practice areas.[286]

Perhaps some of these practice areas were ill-conceived because they required the program to break the barrier of federal law.[287] Perhaps some were rejected because they involved non-forms-based practice areas, contrary to the structure of family law.[288] While administrative law seemed like a good fit and they had the head judge's support to back it up, this area was not pitched very long before the sunsetting.[289] Perhaps, in this instance, it was merely too late to sway the Court, considering it decided to sunset the program a few months later.[290]

Regardless of the reason for the rejected proposals, the program's existing only in family law surely impacted the number of licenses. Just as some would-be candidates were waiting for kinks to be worked out and to see whether LLLTs fared well in the legal profession, many were waiting to become LLLTs with the hope that the program would expand into other practice areas.[291] First, not everyone is interested in family law, and moreover, it would be difficult for a LLLT to run a solo practice in a rural area providing services in family law alone.[292]

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282. Zoom Interview 2, *supra* note 4, at 2; Telephone Interview 5, *supra* note 4, at 5.

283. Zoom Interview 2, *supra* note 4, at 2.

284. Zoom Interview 1, *supra* note 22, at 4; Telephone Interview 5, *supra* note 4, at 5.

285. Zoom Interview 1, *supra* note 22, at 4; Telephone Interview 5, *supra* note 4, at 5; MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 5, at 5.

286. *See* Zoom Interview 1, *supra* note 22, at 3-4.

287. *See* Zoom Interview 12, *supra* note 24, at 7; Zoom Interview 9, *supra* note 24, at 4; Telephone Interview 11, *supra* note 102, at 2.

288. *See* Zoom Interview 9, *supra* note 24, at 4; Zoom Interview 12, *supra* note 24, at 2, 14; *see also* Zoom Interview 7, *supra* note 138, at 3 (believing the LLLT Board proposed practice areas too soon and too broadly).

289. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 11; Zoom Interview 1, *supra* note 22, at 7; Telephone Interview 16, *supra* note 24, at 3-4.

290. *See* Telephone Interview 16, *supra* note 24, at 4-5.

291. Zoom Interview 4, *supra* note 23, at 3.

292. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 5, at 5; Zoom Interview 2, *supra* note 4, at 2; Zoom Interview 4, *supra* note 23, at 3.

Therefore, to carry out the hope expressed by LLLT proposers to have LLLTs provide services in rural areas, they would arguably need to be multi-certified.[293] Consequently, limiting the program to family law had the ability to hinder the program not only in attaining licenses, but also in reaching its full intended potential in providing widespread access, including in rural communities.

For these reasons, some interviewees regretted that the program did not start with more than one practice area and commended Utah for starting its LPP program with three practice areas: family law, forcible entry and detainer, and debt collection.[294] In effecting its program on January 1, 2021, Arizona went even further, allowing its LPs "to practice in administrative law, family law, debt collection and landlord-tenant disputes, with limited jurisdiction in civil and criminal matters."[295] Oregon plans to start its Licensed Paraprofessional program with family and landlord-tenant law.[296] Other states should consider the impact expansion into multiple practice areas may have on a limited license program by looking to these other states as more data becomes available.

4. Low Exam Passage Rate

A month before the June 2020 sunsetting, the passage rate for the LLLT bar exam was calculated at 35.7%.[297] For context, Washington's J.D. bar exam passage rate was 57.3% in 2020 and 68.5% in July 2019.[298] Of course, if approximately two-thirds of

293. Telephone Interview 5, *supra* note 4, at 1; MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 2, at 2-3, Bookmark 5, at 5.

294. Zoom Interview 2, *supra* note 4, at 5-6; Zoom Interview 9, *supra* note 24, at 4; *Licensed Paralegal Practitioner*, *supra* note 9.

295. Moran, *Article on Arizona Nonlawyer Licensees*, *supra* note 9.

296. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 13.

297. Clark PowerPoint, *supra* note 13, at slide 7; *see also LLLT Exam Results*, WASH. STATE BAR ASS'N, [https://perma.cc/6CRM-K2RR] (Oct. 8, 2021) (providing the LLLT bar exam results for the last five exams).

298. *See Persons Taking and Passing the 2020 Bar Examination*, BAR EXAM'R, [https://perma.cc/44A2-ZJQQ] (last visited Oct. 14, 2021) (providing the February 2020 exam passage rate of 48%, the July 2020 exam passage rate of 86%, and the September 2020 exam passage rate of 38%—all percentages being inclusive of all test-takers, not just first-timers); *July 2019 Washington Bar Exam Pass Rates*, JD ADVISING, [https://perma.cc/G3T9-9DJF] (last visited Oct. 14, 2021).

LLLT candidates fail to pass the requisite examination, there are far less LLLTs then there would be if all those obtaining the educational requirements actually entered into the workforce. Therefore, the low exam passage rate certainly played a role in the limited number of licensed LLLTs.

The low exam passage rate raised questions for the LLLT Board and law professors teaching the curriculum. The LLLT Board wondered whether the exam was done appropriately, whether the curriculum was being presented well, and whether it should be prescreening candidates in some way to better assure their ultimate success.[299] Professors and LLLT candidates were provided a study guide to aid in preparing for both the professional responsibility and LLLT bar exams.[300] One professor stated that she ensured students learned the contents of the study guide and beyond, so to her, that so many LLLTs were not passing raised questions as to whether the information on the study guide aligned with what was actually being tested on the exam.[301] The professor did not know who was grading the bar exams, let alone whether they were being graded fairly.[302]

Initially, the LLLT Board received training on exam-writing to assist it in creating the LLLT bar exam.[303] Later, it had assistance from an organization called Ergometrics that worked in conjunction with the LLLT Board's exam committees, which were made up of LLLT Board members and other volunteer legal professionals.[304] The WSBA administers the exam and the grading is done by the exam committee.[305] The LLLT bar exam is long and supposedly created to be just as difficult as the J.D. bar exam, though only in the area of family law.[306] The exam

299. Telephone Interview 5, *supra* note 4, at 6.

300. Zoom Interview 8, *supra* note 44, at 2-3; *LLLT Examination*, WASH. STATE BAR ASS'N, [https://perma.cc/EM4U-PQG7] (Oct. 8, 2021).

301. Zoom Interview 8, *supra* note 44, at 2-3

302. *Id.* at 3.

303. E-mail from Bobby Henry, Reg. Servs. Dep't, Washington State Bar Ass'n, to Lacy Ashworth, Ark. L. Rev. (Apr. 8, 2021, 12:33 CT) [hereinafter E-mail from Bobby Henry 2] (on file with the Author).

304. *Id.*; Zoom Interview 14, *supra* note 269, at 2.

305. E-mail from Bobby Henry 2, *supra* note 303; Zoom Interview 14, *supra* note 269, at 2.

306. *See* Zoom Interview 2, *supra* note 4, at 7; Telephone Interview 11, *supra* note 102, at 7; Zoom Interview 12, *supra* note 24, at 10.

consists of a 135-minute essay session, a 120-minute performance session, and a 90-minute multiple choice session.[307] One professor found it was more difficult for those with only an associate degree that lacked experience as a paralegal in family law to attain the license and pass the exams, as he believed their writing was not sufficient to do so.[308] He felt this shortcoming knocked out "a good third" of the possible candidates.[309]

In contrast, as noted by members of the BOG, upon taking the bar exam, law students typically have seven years of schooling to develop writing and thinking skills.[310] One BOG member questioned that if these tests are meant to gauge competence and two-thirds of candidates cannot pass after fulfilling their LLLT education, what does that say about the program?[311] While the low passage rate fairly breeds such skepticism, considering that LLLTs are taught more than the average law student in the field of family law,[312] it may be that a lack of competence is not the true culprit.

Unlike J.D. candidates who have their pick of numerous bar preparation materials and courses before taking the bar exam, LLLTs are afforded only a study guide listing general topics that are supposed to align with the contents of the exam.[313] While not discussed among interviewees, it should be noted that law professors teaching law students have studied for, taken, and passed the J.D. bar exam.[314] They are able to speak to law students regarding the process and tailor their course exams and

307. *LLLT Examination*, *supra* note 300.

308. Zoom Interview 9, *supra* note 24, at 2, 5.

309. *Id.* at 5.

310. Telephone Interview 11, *supra* note 102, at 7; Zoom Interview 12, *supra* note 24, at 10.

311. Zoom Interview 12, *supra* note 24, at 10.

312. *See supra* text accompanying notes 179-81.

313. E-mail from Bobby Henry, Reg. Servs. Dep't, Washington State Bar Ass'n, to Lacy Ashworth, Ark. L. Rev. (Apr. 8, 2021, 10:52 CT) [hereinafter E-mail from Bobby Henry 1] (on file with the Author). One LLLT who passed the LLLT bar exam her first time stated she made her own bar preparatory materials, and she gave those materials to another LLLT. Zoom Interview 6, *supra* note 97, at 4. As she understands it, there are nine bootleg copies of her materials floating around, and she was happy to have been able to do that for others. *Id.*

314. *How Do I Become a Law School Professor?*, FINDLAW, [https://perma.cc/38UG-QZY6] (June 20, 2016).

teaching styles to better prepare students to take the bar.[315] Meanwhile, law professor teaching LLLTs lack familiarity with the LLLT bar exam grading process.[316] The only resource provided to professors to assist them in preparing LLLTs is the same study guide that is supposed to align with their exam—which the professor has neither taken nor seen.[317] Consequently, to better enable professors to prepare LLLTs for their bar exam, they should be made privy to its contents.

Further, while it may be unfeasible for the entity writing and grading the bar exam to provide LLLTs with more substantive bar preparation materials,[318] with so few candidates able to pass the exam, it is imperative to find an ethical way to do so.[319] And, as one professor felt subpar writing skills played a role in the low exam passage rate,[320] perhaps the LLLT program could have better incorporated opportunities for writing development. For this reason, paraprofessional bar preparatory materials should also include practice essays.

Lastly, if the LLLT bar exam is really as substantively difficult as the J.D. bar exam in the area of family law, perhaps such difficulty should be reconsidered. While it is important, in the interest of client protection, that LLLTs be competent and that their competency be tested, LLLTs are neither law school graduates nor are they permitted to do that which an attorney can do in family law after passing the bar.[321] Regardless of difficulty and these other factors, it may be necessary to take a second look to assure the actual LLLT bar exam aligns with both the curriculum being taught and the duties of LLLTs upon passing. If these elements do not align, LLLTs are handicapped, and their

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315. *See* Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645, 646 (2015).

316. Zoom Interview 8, *supra* note 44, at 2-3.

317. *See id.*

318. E-mail from Bobby Henry 1, *supra* note 313 (noting "as the licensing agency and administrators and writers of the exam, it would not be appropriate for the LLLT Board or the WSBA to develop an exam prep program[]" and "bar exam prep is provided by the law schools or private companies for the same reason").

319. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 15, slide 9 (discussing the low exam passage rates and noting that a "licensing exam prep course[]" could increase exam passage rates).

320. Zoom Interview 9, *supra* note 24, at 5.

321. *See generally supra* Sections II.B., II.C.

bar exam passage rate is doomed from the start. If they do, considerations must be made for how to better assure LLLTs can prove competence in the examination room.

5. Lack of Support from the Legal Community

Another reason that may have led to the program's inability to attract LLLT candidates is that it was not supported by the legal community.[322] As previously discussed, from its inception, the LLLT program had its opponents.[323] At forums to educate the public on LLLTs, some lawyers would express their disapproval of the program, and some lawyers would not sign off on LLLT work and disrespected LLLTs once they entered the profession.[324] There was opposition to the program even before its implementation and expansion of scope.[325] Recall that after the WSBA voted to allow LLLTs to become members of the Family Law Section, some family law practitioners left to create their own group in which LLLTs were not allowed.[326] Exclusion and criticism further carried over onto forums such as listservs and Facebook.[327]

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322. *See* Zoom Interview 8, *supra* note 44, at 2 (in speculating why there were so few LLLTs, she discussed the tremendous push back from attorneys about the program, while noting that on the other end of the spectrum, some LLLTs were being hired by attorneys to work in their firms); Zoom Interview 9, *supra* note 24, at 3 (finding the constant resistance from the Family Law Section to be one of three political reasons leading to the program's downfall); Zoom Interview 6, *supra* note 97, at 3 (discussing how the adversarial dynamic with the WSBA was deeply threatening to people); Zoom Interview 7, *supra* note 138, at 2 (discussing how there were not enough people speaking positively about the program); Telephone Interview 5, *supra* note 4, at 5 (noting hostile audiences made up of lawyers against the program); *see also supra* Part III.

323. *See supra* note 25 and accompanying text. *See generally supra* Part III.

324. *See supra* notes 134-39 and accompanying text.

325. *See supra* note 124 and accompanying text. *See generally supra* Part III.

326. *See supra* note 126 and accompanying text.

327. Zoom Interview 9, *supra* note 24, at 3; Zoom Interview 4, *supra* note 23, at 2 (listservs made LLLTs out to be secretaries dabbling); Alisa Bagirova, Comment to Washington State Bar Association, FACEBOOK (May 12, 2020), [https://perma.cc/6385-49RH] (stating she is a family lawyer and her experience with LLLTs is that they charge as much as she does and "lots of times" they fill out forms incorrectly); *see also* White, *supra* note 191 (responding that she apologizes and does not know a single LLLT charging attorney rates, and most she knows do flat fee, reduced rates, and pro bono work, and also noting "[w]e all want to do our best for our clients and learn from any mistakes we make.").

When there are already so many inherent risks and reasons to be skeptical about investing time and money into a new profession, the fact that it was not well-received likely did not help attract candidates, especially those practicing the wait-and-see approach.[328] In the May 12, 2020 meeting between the LLLT Board and the Court, a member of the Board expressed her hope that "over time[,] once we have the support and once we have the vocal welcoming into the bar community . . . we're going to see more people wanting to take a chance and . . . join us."[329] Of course, this did not happen, as the program was sunsetted less than a month later.[330] Hopefully, other states can learn from the impact a lack of support from the legal community can have on the number of people willing to take on a new legal profession. Perhaps they will reap the benefits only hoped of in Washington.

VI. LESSONS LEARNED

It is easier and faster to edit than to create.[331]

Aside from providing background information on the access to justice gap and on the LLLT program itself, up until this point, this Comment has discussed the shortcomings of the program and those tasked with supporting and administering it, it has presented the concerns of the BOG, other members of the legal community, the Washington State Supreme Court, the LLLT Board, and others involved, and it has analyzed the overarching reasons provided by the Court for sunsetting the LLLT program. This section works to summarize some of the lessons alluded to above, and to provide and expound on some of the other suggestions offered by interviewees when asked what would help the next

328. *See supra* text accompanying note 272.

329. May 12, 2020 Meeting, *supra* note 8, at 01:53:50-01:54:09.

330. *See* Letter Notification of Sunsetting, *supra* note 11, at 1.

331. I give credit specifically to interviewees 13 and 14, who similarly stated this concept, and to many other interviewees who alluded to the same, which gave me the idea to start this section in this way. *See* Zoom Interview 14, *supra* note 269, at 2 (noting it is faster to edit than to draft and now other states can look at Washington's rule and edit rather than draft it); Zoom Interview 13, *supra* note 19, at 2-3; *see also* Kirsten Jordan, *Bag of Tricks: It's Easier to Edit Than Create*, PEOPLERESULTS (Oct. 12, 2012), [https://perma.cc/6RRL-6PXC].

state better succeed in developing a sustainable nonlawyer program.

A. Ensure Oversight and Objectivity

As previously discussed, the LLLT program became a political and controversial issue in Washington, as most firsts do.[332] Although the purpose of the LLLT was to take a "baby step" in the direction of providing better access to civil justice,[333] the program grew to mean more than that for Washington. Being in favor of the program seemed to translate into being in favor of other concepts, such as access to justice, or racial equality—an association that deterred some people from questioning the program.[334] Still, there were questions about the objectivity of the LLLT Board and its need for oversight.

Regarding objectivity, there was the concern that because a few members of the LLLT Board were being paid to teach LLLT courses, they had a financial interest in the program that could impact their decisions in overseeing the program.[335] Also, because Washington was the first, and much thought, work, and advocacy went into the initial proposal and development of the program, there existed the belief that such passionate advocacy, without outside oversight, impacted the LLLT Board's ability to be the "objective shepherd the program need[ed]."[336]

Further, there was uncertainty about whether the LLLT program was meant to have oversight beyond that of the Court and the LLLT Board. In the Court's 2012 Order adopting APR 28, it stated the LLLT Board would have the authority "to oversee the activities of and discipline certified [LLLT]s in the same way the [WSBA] does with respect to attorneys."[337] APR 28 stated the Bar was to "provide reasonably necessary administrative

332. *See supra* text accompanying note 24.
333. *See supra* text accompanying notes 166, 175.
334. Zoom Interview 12, *supra* note 24, at 12-13.
335. *Id.* at 12.
336. Letter from Dan Bridges, *supra* note 144, at 6.
337. 2012 Order for APR 28, *supra* note 5, at 3.

support for the LLLT Board[]"[338] but what that support should entail beyond funding the program seemed unclear. Because the program was adopted by Court Order, it was considered the Court's program.[339] While the Court did not mandate the WSBA not to question the program, the BOG was told by a ranking WSBA member that it was not to question it, and moreover, the BOG did not feel doing so would be fruitful.[340] It was not until several years into the program that the Court expressed to the BOG that it was not only allowed, but it was expected to conduct oversight of the LLLT program, because if the BOG was not overseeing the program, who was?[341] It was following this stamp of approval that the BOG began looking into what the provided money was able to procure in terms of licenses.[342]

Consequently, when the WSBA brought financial concerns and questions to the doorstep of the LLLT Board in 2019, they were viewed as a symbol of lost support.[343] The LLLT Board began looking for funding elsewhere and crafting a more concrete business plan to show how and when the program could achieve self-sufficiency and what, theoretically, would need to occur to

338. WASH. ADMISSION TO PRAC. R. 28(C)(4).

339. Telephone Interview 11, *supra* note 102, at 4; Zoom Interview 12, *supra* note 24, at 5.

340. Telephone Interview 11, *supra* note 102, at 4; Zoom Interview 12, *supra* note 24, at 5.

341. Zoom Interview 12, *supra* note 24, at 5 (believing the conversation had taken place two or three years ago [from this December 2020 interview] at the BOG's annual meeting with the Court in April, but not knowing for sure).

342. *Id.* at 6.

343. *See* Zoom Interview 2, *supra* note 4, at 3 (discussing how budget concerns were not brought to the LLLT Board until October 2019); Zoom Interview 1, *supra* note 22, at 5-6, 8 (also discussing how budget concerns were not brought to the LLLT Board until October, and noting that if the financial concerns were brought to the Board earlier, it would have looked for other funding earlier, and because it operates on a fiscal year, the Board believed it would have at least a year to address the budgetary concerns); *see also* Telephone Interview 16, *supra* note 24, at 2 (noting he encouraged the LLLT Board to create a plan for financial self-sufficiency because the WSBA had budgetary concerns and a group was against the program). *See generally* Letter from Daniel D. Clark, Treasurer, Washington State Bar Ass'n Bd. of Governors, to Steve Crossland, Chair, Ltd. License Legal Technician Bd. (Nov. 15, 2019) (on file with the Author) (discussing that the program was intended to be "cost revenue neutral to the WSBA budget[]" and that the program had not met this goal, and inviting Crossland to attend the BOG's Budget and Audit Committee meeting to discuss collaborative ways to solve the financial issue—noting the letter was "not meant to be considered an adversarial communication . . . .").

do so more quickly.[344] For instance, if the Court approved expansion into other practice areas, lessened the hours of experience from 3,000 to 1,500, and lessened the years required for paralegals to enter through the waiver process—all of which are changes to the program for which this Comment advocates.[345]

These proposals and the developing business plan were submitted to the Court in the LLLT Board's March 2020 report, in which it also noted how "[t]he recent difficulties in determining points of authority between the BOG and LLLT Board hinder our ability to work efficiently."[346] While many of the changes proposed by the LLLT Board would have helped in increasing numbers, attaining self-sufficiency was still nine years and nearly one million dollars away, and even this 2029 projection was assuming the Court approved the Board's proposals and that the Board's assumptions were correct.[347] And, because the Board's plan to fundraise in order to attain more substantial outside funding was so new, the WSBA's obligation to subsidize the program appeared indefinite.[348] The proposal and plan, though thorough and outwardly promising, seemed to come too late for Washington, as the Court decided to sunset the program only months after being presented with the detailed plan.[349] Similarly,

344. *See* MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 6, at 8 (stating "[t]he LLLT Board is exploring fundraising as a way to help offset WSBA's costs for administering the program . . . ."); Zoom Interview 14, *supra* note 269, at 1; *see also* Letter from Steve Crossland, Chair, Ltd. License Legal Technician Bd., to Washington State Bar Found. Bd. of Trs. 1 (Mar. 13, 2020) (on file with the Author) (requesting that the Foundation "create a LLLT fund to enable the LLLT Board to seek contributions from potential donors and grantors and securely manage funds obtained.").

345. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 6, at 8; Zoom Interview 14, *supra* note 269, at 1-2; *see also infra* notes 355-61 and accompanying text.

346. MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 5, at 7.

347. Clark PowerPoint, *supra* note 13, at slide 8; *see also* May 12, 2020 Meeting, *supra* note 8, at 00:55:40-00:56:42 (noting that the LLLT Board provided data backing its assumptions to show their likelihood).

348. *See generally* Letter from Kristina Larry, President, Washington St. Bar Found., to Steve Crossland, Chair, Ltd. License Legal Technician Bd. (Apr. 10, 2020) (on file with the Author) (responding to and denying the LLLT Board's request to create a LLLT fund).

349. *See* Letter from Stephen R. Crossland, Chair, Ltd. License Legal Technician Bd., to JJ. of the Washington Sup. Ct. 2 (April 22, 2020) (on file with the Author); MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85, at Bookmark 15; Letter Notification of Sunsetting, *supra* note 11, at 1.

while budget concerns and calls for collaboration were brought to the LLLT Board in late 2019,[350] they too seemed to come too late to be truly fruitful for the program, as there was uncertainty about oversight and an underlying opposition between the program's key entities that had been building up since it was initially proposed.[351]

When administering any new program, it is important to have passion, but equally important is the ability to have free-flowing questions and ideas, objectivity, and oversight. Such principles elicit trust in the decisions and decisionmakers and assure the program is reaching its full potential for the purpose for which it was designed. Plausibly, if the LLLT Board, the WSBA, and the BOG recognized or had been better appraised of the BOG's intended role in conducting oversight of the program from its initial implementation, the administrative minds of the BOG and the passionate minds of the LLLT Board could have collaborated sooner, more effectively, more objectively, and potentially with less hostility, to foster better reactions toward the program and potentially its financial sustainability, in order to carry out the intended purpose of providing more people with access to justice.

Perhaps then, the Court's confidence, as expressed in its 2012 Order, "that the WSBA and the Practice of Law Board, in consultation with this Court, w[ould] be able to develop a fee-based system that ensure[d] that the licensing and ongoing regulation of [LLLT]s w[ould] be cost-neutral to the WSBA" would not have been so ill-founded.[352] Of course, for this collaboration to be fruitful, the BOG would have had to better support the program at its inception, because as previously mentioned, if the decision to approve the program was in the hands of the BOG in 2012, it would not have been implemented.[353] Therefore, it remains paramount for the Court to have the power of final approval.

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350. *See supra* note 343 and accompanying text; *see also* Letter from Daniel D. Clark, *supra* note 224, at 2 (discussing his "attempt[] to work in good faith collaboration with the LLLT Board.").

351. *See generally supra* notes 146-150 accompanying text.

352. *See* 2012 Order for APR 28, *supra* note 5, at 11.

353. *See supra* note 148 and accompanying text.

B. Change the Program

There were many aspects of the program itself that hindered it from reaching its full potential in numbers. Having lesser numbers surely impacted the perception of the cost of the program, and in conjunction, the amount of support coming from the WSBA.[354] To better assure a nonlawyer program achieves greater numbers, support, and sustainability—all of which are greatly intertwined—other states should consider the following program changes. Note first, while many of these changes were considered or proposed by the LLLT Board or other observers throughout the life of the program, in learning from Washington, these changes should be employed upon initial implementation:

(1) Promote the program vigorously and immediately—as a career and as a resource to potential clients;[355]

(2) Set the experiential hours at a number that fosters sufficient training and competency, while still ensuring feasibility. To allow for this balance, take a page out of Utah and Arizona's prequel and require at least some of the hours to be in the area the nonlawyer will work upon entering the legal profession.[356] As the nurse practitioner and doctor relationship has shown, quality concerns will always be a point of contention between professional and paraprofessional.[357] This change can be further used as a sword in fighting against quality concerns;

(3) Again, in learning from changes made by Washington's successors, start the program with multiple practice areas to attract candidates interested or experienced in different areas of law, and to better allow solo practitioners to stay financially afloat while charging reasonable prices, recognizing overhead may be similar to attorneys.[358] This is especially true in attempting to fulfill the goal of offering limited services in rural areas, where the ability to provide legal services in multiple areas may be the only way for a rural nonlawyer to maintain a solo practice;[359]

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354. *See generally supra* Section V.A.
355. *See supra* Section V.B.1.
356. *See supra* note 260 and accompanying text.
357. *See supra* notes 107-08 and accompanying text.
358. *See supra* notes 292-96 and accompanying text.
359. *See supra* notes 392-93 and accompanying text.

(4) Find a way to provide candidates with resources to assist them in passing their competency exams, including essay-writing resources (as are provided to law students).[360] Also, assure the classroom curriculum aligns both with the exam and the actual duties of the nonlawyer upon entering the legal profession.

(5) Get rid of as much risk as possible. Recognizing starting a new profession is risky in and of itself, find a way to ensure financial aid is available through the curriculum provider.[361]

The LLLT Board cannot be considered negligent for not incorporating these addendums when crafting the rule in 2005, or when the Court adopted it in 2012, just as it could not have foreseen that such alterations would be helpful when creating the program from scratch. Importantly, upon realizing that the program could be aided by certain changes, the LLLT Board made various proposals, many of which were rejected.[362] This reality brings me to the next point.

C. Work to Stick to the Original Idea, but Forewarn Change

The legal community either turned against or became even less in favor of the LLLT program when the LLLT Board, through proposals for expansion of scope and expansion into other practice areas, worked to develop the program into something it initially was not—succeeding in the former expansion only by a five-four majority vote.[363] Note this shift in support. The BOG swallowed the idea of the program upon its implementation only after being promised that LLLTs would not enter the courtroom.[364] It retracted such support once the LLLT became something more.[365] Seven of nine members of the Court approved the program when the scope of the LLLT was more limited, but when the Court was voting to allow LLLTs to provide aid to clients during negotiations, depositions, and in the

360. *See supra* notes 313-20 and accompanying text.

361. *See* Donaldson, *supra* note 94, at 67 (similarly discussing how developing more scholarship opportunities could attract more candidates, especially those from "lower income backgrounds").

362. *See generally supra* Section V.B.3.

363. *See supra* notes 99, 102-06, 156 and accompanying text.

364. *See supra* notes 156-57 and accompanying text.

365. *See supra* notes 100-06 and accompanying text.

courtroom, that vote changed, only earning the support of five members.[366]

While radical change is certainly the only way to fully close the access to justice gap, states must consider what is feasible, because as many interviewees noted, the legal profession is resistant to change.[367] Changing the program from its original form surely played a role in its lack of support, and its lack of support surely played a role in its inevitable sunsetting.[368] While Washington is unique because it was the first to permit nonlawyers to practice law, other states have the benefit of already having the concept of nontraditional programs lingering in the legal profession, as other states have adopted or considered similar programs and the ABA has publicly called for innovation.[369] Still, as the legal profession remains self-regulating,[370] other states must consider the potential impact that the lack of support from attorneys, who are tasked with approving, implementing, administering, and funding these programs, can have. On the other hand, states must balance the need to be able to change an implemented program when it is not working or producing the intended results, as the LLLT Board and the majority of the Court did, at least in finding LLLTs could be more useful to clients with an expansion in scope.[371]

Therefore, while Washington understandably could not and arguably should not have had to stick to its program's original idea, or guarantee that it would remain static when creating it from scratch, other states can learn from the shift in support that

366. *See supra* notes 99-102 and accompanying text.

367. Zoom Interview 8, *supra* note 44, at 3-4 (noting that due to the nature of the job, attorneys are always looking for something to oppose); Zoom Interview 9, *supra* note 24, at 6 (stating it all comes down to the facts that courts develop slowly, the law develops slowly, and lawyers do not like large-scale change, they like incremental change, so future states considering similar programs have to look at it as "incremental change"); Zoom Interview 4, *supra* note 23, at 2-3 (believing the Court's sunsetting the program sent the message that it will "do anything to maintain the status quo"); Zoom Interview 3, *supra* note 23, at 3 (stating that for a program like this to succeed, the legal profession would need to adapt as the medical profession has and to look at issues in a new way).

368. *See generally supra* Sections II.C., III.C., V.B.5.

369. *See supra* notes 5, 16 and accompanying text.

370. Jonathan Macey, *Occupation Code 541110: Lawyers, Self-Regulation, and the Idea of a Profession*, 74 FORDHAM L. REV. 1079, 1081 (2005).

371. *See supra* notes 96-101 and accompanying text.

occurred in Washington upon changes to the program and try to better determine from the outset what their nonlawyer paraprofessional will do. Then, they can promote the program in a uniform way and in a way that assures everyone knows what the program is and that it *is* subject to change for the purpose of meeting the overarching goal of providing more people with access to legal services.[372] The legal profession must also take responsibility in understanding that programs need to be changed to better achieve their intended purpose. However, this transparency and forewarning may at least allow the legal profession to prepare for such changes, whether or not they agree with them.

D. Monitor Through Data Collection

Another apparent point of disconnect between the LLLT Board and the BOG was whether and how LLLTs could collect data about their services. As discussed in Part IV, the BOG did not believe LLLT and client testimonials alone sufficed to show that LLLTs were actually increasing access to justice.[373] While LLLTs and LLLT Board members expressed confidentiality concerns,[374] a member of the BOG believed there to be several non-privileged statistics that could have been provided to justify the program: number of divorces, success rates, case counts, outcomes, prices, and other information if LLLTs asked their clients to waive confidentiality.[375] A member of the LLLT Board stated there were antitrust problems with its asking LLLTs for certain information, including how much they make.[376] The only information that it has is the limited information some LLLTs have voluntarily provided.[377] An interviewee felt that because there was information that LLLTs could have provided without

372. Doing this would hopefully dispel the "bait and switch" and "smoke and mirrors" concerns. *See supra* note 105 and accompanying text.

373. *See supra* notes 195-97 and accompanying text.

374. *See supra* note 196 and accompanying text.

375. Zoom Interview 12, *supra* note 24, at 8-9.

376. Zoom Interview 1, *supra* note 22, at 8-9.

377. *Id.* at 9.

issues of confidentiality, that LLLTs were not providing such data leads one to consider why.[378]

Relevantly, in the 2020 ABA resolution encouraging innovative thinking to aid in the access to justice crisis, the ABA called for "the collection and assessment of data regarding regulatory innovations, both before and after the[ir] adoption . . . to ensure that changes are data driven and in the interests of clients and the public."[379] The ABA resolution further stated:

> The collection of such data is critical if the legal profession is going to make reasoned and informed judgments about how to regulate the delivery of legal services in the future and how to address the public's growing unmet legal needs. We need to experiment with different approaches, analyze which methods are most effective, and determine which kinds of regulatory innovations best provide the widest access to legal services, best provide continuing and necessary protections for those in need of legal services, and best serve the interest of clients and the public.[380]

As expressed by the ABA, the ability to use data to measure the success of a program in providing access in a way that protects the public is imperative.[381] Of course, it cannot go understated that Washington was the first, and that it created its program long before the ABA encouraged innovation and data collection.[382] Still, while BOG and LLLT Board members disagree about what information is feasible to attain when neither the 2012 Court Order nor APR 28 require LLLTs to report such data, they both seem to agree that future states should come up with some kind of system at the outset of the program that outlines how administrators plan to gauge their program's success.[383] To better appease both sides of the equation, this should be done in a way

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378. Zoom Interview 12, *supra* note 24, at 8.

379. RESOLUTION 115, *supra* note 16, at 3.

380. *Id.*

381. *Id.*

382. *See* 2012 Order for APR 28, *supra* note 5, at 12 (drafted in 2012); RESOLUTION 115, *supra* note 16, at 4 (drafted in 2020).

383. *See* Zoom Interview 4, *supra* note 23, at 4; Telephone Interview 11, *supra* note 102, at 6; Zoom Interview 12, *supra* note 24, at 8-9.

that avoids confidentiality and antitrust concerns, but results in more than voluntary information from willing LLLTs.[384]

Notably, while the LLLT program lacked a specific system for measuring success, there have been some studies of the LLLT program by outside entities and within the program itself.[385] In fact, the National Center for State Courts ("NCSC") is currently conducting a study of the LLLT program.[386] While the study was planned prior to the program's sunsetting, the NCSC still plans to follow through with it, and LLLT Board members hope the results, coming from an outside entity with the goal of improving the court system, will help establish the program as viable, though they wish the Court would have waited for such impartial results prior to sunsetting.[387] While there are limitations to the information the NCSC may obtain due to the state system and the need to obtain the consent of LLLTs and their clients, the NCSC is getting input from judges, lawyers, LLLTs, and clients to determine the impact and viability of the program.[388] Other states should consider the results upon completion.

E. Develop Clear and Mutual Expectations

384. The ABA resolution cited Utah's Unlocking Legal Regulation project as one example of an effort to collect and analyze data: "Among other initiatives, the project will '[a]ssess and support pilot projects for risk-based regulation in Utah and other states, including identifying metrics and conducting empirical research to evaluate outcomes.'" RESOLUTION 115, *supra* note 16, at 3 (citing *Unlocking Legal Regulation*, UNIV. DENVER INST. FOR ADVANCEMENT AM. LEGAL SYS., [https://perma.cc/YMM5-7U59] (last visited Oct. 14, 2021)). While providing data may seem intrusive and yet another burden that the paraprofessional must take on in addition to all those that come with being a part of a new profession, at least until the program proves itself, such data collection is essential to assure the program is working as intended. If the data results are positive, then this requirement would help prove the program as viable sooner and may increase support from those tasked with funding the program, even if the program is not self-sustaining as quickly as anticipated.

385. *See generally* PRELIMINARY EVALUATION OF THE LLLT PROGRAM, *supra* note 265; REPORT: THE FIRST THREE YEARS, *supra* note 79; MARCH 2020 REPORT OF THE LLLT PROGRAM, *supra* note 85; Donaldson, *supra* note 94.

386. Telephone Interview 5, *supra* note 4, at 8; Zoom Interview 1, *supra* note 22, at 8; Zoom Interview 2, *supra* note 4, at 7.

387. *See* Letter in Response to LLLT Sunsetting, *supra* note 10, at 1; Telephone Interview 5, *supra* note 4, at 8; Zoom Interview 1, *supra* note 22, at 8; Zoom Interview 2, *supra* note 4, at 7.

388. Zoom Interview 1, *supra* note 22, at 8-9; Telephone Interview 5, *supra* note 4, at 8.

Though it comes last, this section presents, in my opinion, the true crux of the problem with Washington's LLLT program. Perhaps the program's greatest issue was that no one seemed to be on the same page—about who, where, how, in what practice area, for what purpose, and under what oversight the LLLT would serve. The program was required to be self-supporting in a reasonable period of time, but proponents, opponents, and even members of the Court seemed to be on different pages as to what constituted reasonable.[389] Until attaining such status, the program was to be subsidized by the WSBA, but there was disconnect as to how much money the program should be expending in the meantime.[390] A member of the LLLT Board believed that if people could grasp just how much it would cost to implement this type of program, that would be one less criticism, because finances would not come as a shock.[391] Now, administrators can look at Washington and see that it cost them $1.4 million to develop and administer the program from scratch in an eight-year period and they can use these figures in determining projected funds and time allocations for future programs *from their beginning*.[392]

There were also different notions about how long the program was actually producing licenses and able to generate funds. The BOG pointed to the fact that there were only thirty-eight active LLLTs produced in an eight-year period,[393] while the LLLT Board and proponents stressed the considerable amount of preparation that went into the first three years of the program and

389. *See supra* Section V.A.I.; *see also supra* notes 47-48, 158 and accompanying text; May 12, 2020 Meeting, *supra* note 8, at 01:56:03-01:56:23 (discussing why the LLLT Board believed their time estimations for achieving cost neutrality to be reasonable).

390. *See* discussion *supra* Section V.A.

391. Telephone Interview 5, *supra* note 4, at 9.

392. *Id.*; *see also* Zoom Interview 13, *supra* note 19, at 3 (noting that different states spend differently, so other states should look at the details of the costs within Washington, rather than just the number, but finding that the money and time spent in Washington can give other states a sense of the scope).

393. *See* Clark PowerPoint, *supra* note 13, at slides 7, 9, 13; *see also* Letter from Dan Bridges, *supra* note 144, at 1 (this letter was written almost a year earlier, so the numbers are different, but it illustrates the same point, mentioning "[f]or $2 million dollars [sic] spent over 7 years, there are only 35 actively licensed LLLTs . . . .").

that the first LLLT did not enter the profession until mid-2015.[394] Further, recall that the first cohort and many of the first LLLTs were long-time paralegals that entered the program through the waiver process, rather than by undergoing the usual, longer course of completion.[395] As the program continued, more and more candidates were non-paralegals who had to complete the entirety of the program's requirements, which is estimated to take a minimum of three and half years, but can take much longer for a candidate unable to attend full-time.[396] Members of the LLLT Board believed the Court and opponents misunderstood the program's timeline for moving candidates through the pipeline.[397] Significantly, saying thirty-eight active LLLTs in eight years[398] versus thirty-eight active LLLTs and 275 people in the pipeline in five years[399] surely has a different ring to it.

Importantly, for any future nonlawyer program to survive, all key entities must support the program. One of the reasons support was lacking in Washington was because there were so many differing views on what the program would and should be. In summary, as one insightful interviewee stated, we all believe in access to justice, we just have different ideas about how to get there, so if people can go into this type of program with shared and realistic expectations, they are more likely to be successful.[400]

CONCLUSION

394. May 12, 2020 Meeting, *supra* note 8, at 01:52:54-01:53:17; Zoom Interview 2, *supra* note 4, at 3-4; Telephone Interview 5, *supra* note 4, at 6; Zoom Interview 13, *supra* note 19, at 2.

395. *See supra* notes 266-67 and accompanying text; May 12, 2020 Meeting, *supra* note 8, at 01:52:24.

396. Letter in Response to LLLT Sunsetting, *supra* note 10, at 2 (noting that it can take much longer for a candidate with family or financial demands, or if he or she struggles in finding work experience); *see also* Zoom Interview 4, *supra* note 23, at 2-3 (noting it takes many candidates a while to become a LLLT because they are older, on their second profession, and with kids and other responsibilities).

397. *See* Letter in Response to LLLT Sunsetting, *supra* note 10, at 3, 5; May 12, 2020 Meeting, *supra* note 8, at 01:52:24; Zoom Interview 4, *supra* note 23, at 2; Zoom Interview 1, *supra* note 22, at 6; Zoom Interview 2, *supra* note 4, at 3-4.

398. *See* Clark PowerPoint, *supra* note 13, at slides 5-7.

399. *See* Letter in Response to LLLT Sunsetting, *supra* note 10 at 4, 5; *see also supra* notes 92, 251 and accompanying text.

400. Zoom Interview 13, *supra* note 19, at 3-4.

Contrary to society's goal, the access to justice gap is widening. Low-income individuals face a vast majority of their civil legal needs alone, and the number of unmet civil legal needs for moderate-income individuals continues to grow.[401] As voiced by Justice Sonia Sotomayor, "[w]e educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice."[402] Yet, despite its best intentions, the legal profession, in its traditional sense, is failing to fulfil this important duty.[403] When the alternative to being unable to afford an attorney is no representation at all, we must consider ways to meet those in need in the middle.[404] It is time for the legal profession to focus on the bigger picture; to open our minds to change; to continue to consider innovative solutions; to give proposed solutions the patience, time, and support they deserve; and to take whatever lessons we can from those inevitably deemed to come up short.

With the help of individuals uniquely involved, this Comment analyzed the successes and shortcomings of Washington's innovative LLLT program from its conception to its ultimate sunsetting.[405] In doing so, it further emphasized some key lessons other states should consider moving forward in establishing and developing similar nonlawyer paraprofessional programs.[406] Many interviewees hope, in one way or another, other states will take whatever lessons and work product they can from Washington and continue to innovate.[407] Perhaps then, the program can return to Washington improved by its successors—

401. *See supra* notes 32-34 and accompanying text.

402. Randy James, *Sonia Sotomayor: Obama's Supreme Court Nominee*, TIME (May 27, 2009), [https://perma.cc/VHL7-F9KU] (quote stated in 2002).

403. *See supra* notes 1-4 and accompanying text. *See generally supra* Part I.

404. *See supra* Part I.

405. *See supra* Parts IV, V.

406. *See supra* Part VI.

407. *See* Zoom Interview 3, *supra* note 23, at 3; Zoom Interview 4, *supra* note 23, at 4; Telephone Interview 5, *supra* note 4, at 10; Zoom Interview 13, *supra* note 19, at 2-3; Zoom Interview 14, *supra* note 269, at 2; Zoom Interview 15 with Wash. State Bar Ass'n Bd. of Governors Member 1 (Jan. 8, 2021) (stating he is sure a program like this can work, believing fresh perspectives and new outlooks will help and noting that Utah seems to be doing well).

to better achieve the intended purpose of providing more people with access to justice.[408]

408. *See* Zoom Interview 3, *supra* note 23, at 3; Zoom Interview 13, *supra* note 19, at 2-3; Telephone Interview 16, *supra* note 24, at 5 (still believing the LLLT will return to Washington in the next decade).