

Outside the Box

Nothing is off-limits for the California bar's Task Force on Access Through Innovation in Legal Services

BY JASON TASHEA

Joanna Mendoza spent her legal career in California working with clients facing business litigation and intellectual property issues. However, it's her life experience that gave her empathy and formed her vision for what access to those legal services should look like.

As a child in a blue-collar family, she grew up in government housing and received free school lunches. She was a first-generation college

and law school graduate, and even after establishing herself as an attorney, she lost her home and went on government aid during the Great Recession.

So, when she became a trustee for the State Bar of California in 2013, she aimed to improve the profession's ability to provide legal services from the inside. She had the ability to put herself in the position of a person in need of legal services, which allowed her to see the faults of the current regulatory structure.

Now, she is taking one more stand on the side of legal consumers before retirement as a member of the California bar's Task Force on Access Through Innovation in Legal Services. The group, which laid



Andrew Arruda

Toby Rothschild

Joyce Raby

Lee Edmon

Joanna Mendoza

the groundwork for what could become the largest modern reform to the state's professional rules potentially set a road map for others around the country.

"It was my last chance before I moved on with my life to actually make a difference," says Mendoza, 56. "We're failing at providing legal services to the masses."

Economic stress and inflexible regulations are reasons why people and corporate clients have changed how they access legal services or forgo legal help entirely, according to a report to the state bar prepared by Indiana University Maurer School of Law professor Bill Henderson. In his report, Henderson argued: "The law should not be regulated to protect the 10% of consumers who can afford legal services while ignoring the 90% who lack the ability to pay."

In response, the task force was created with a mission to think holistically about regulatory changes to improve the public's access to legal services.

"The charge was to take a step back and say, 'Are those the right rules to begin with?'" says Toby Rothschild, 75, a task force co-vice chair who is of counsel to OneJustice, a pro bono network. If not, their goal was to rethink professional and court rules, statutes and other policies that could improve access to justice without sacrificing public protection, he says.

The rundown

The task force, consisting of 22 members—half of whom are not lawyers—provided 16 options for further consideration by the bar's Board of Trustees. Specific reforms included proposals relaxing unauthorized practice of law regulations to allow certain qualified nonlegal professionals to provide legal services under certain conditions, and recommending that long-standing prohibitions against fee-splitting and nonlawyer ownership of law firms be largely eliminated.

Historically, going after these rules provokes strong reactions and proves to be the third rail for legal reformers. However, the intellectual sparring within the task force was exciting and re-

"The justice gap just seems to be getting bigger."

—Presiding Justice Lee Edmon

spectful, says Joyce Raby, 56, executive director of the Florida Justice Technology Center who serves as co-vice chair of the California task force. Raby was previously at the Legal Services Corp., where she helped create the Technology Initiative Grant Program (see "A Rewarding Mission," page 56).

Even with strong differences among members, the group showed it can address concerns and incorporate different views while improving each other's recommendations, as opposed to playing for all or nothing, she says.

The task force's work comes at a time when people in the U.S. are struggling more than ever to find and afford legal services.

The World Justice Project, which tracks the rule of law, including access to legal counsel, has reported a decline in Americans' ability to access counsel between 2010 and 2018. Low-income Americans fall into the access-to-justice gap by receiving inadequate or no help for 86% of their civil legal problems; and only 39% of moderate-income respondents to an ABA survey turned to the legal system when dealing with a civil issue. This problem even exists in California, with its nearly 80,000 employed attorneys.

"We all see a huge need," says California Second District Court of Appeal Presiding Justice Lee Edmon, 64, who chaired the task force and has seen self-represented litigants in her court. "The justice gap just seems to be getting bigger."

With all options on the table, the task force had the space to think about what an ideal outcome would be and not just what was politically expedient.

"I think it's important not to think about short-term wins all the time," says Andrew Arruda, a task force member and co-founder of Ross Intelligence, a legal research company. "I think we need to lead with our big, audacious goals and then from those goals work backwards with really actionable things we can do in the short- to middle-term."

Those audacious goals were released for public comment this past summer to responses varying from hostility to genuine support. Beyond private meetings and public town halls held by task force members, 2,882 written comments were submitted. With these comments, the task force revised recommendations that will now go in front of the Board of Trustees, which will determine the fate of each recommendation. Those that move forward may be considered by the state's supreme court, the state legislature or both.

Sign of the times

California's work is being watched closely by others around the country. The output from the task force has "contributed mightily to the national discussion around access to justice and whether the [ABA Model] Rules may be contributing to that problem," says Jayne Reardon, executive director of the Illinois Supreme Court Commission on Professionalism.

Other states are considering their own changes. In August, the Utah Work Group on Regulatory Reform put forward recommendations that would scrap their existing regulatory system for one that ensures that consumers have "access to a well-developed, high-quality, innovative and competitive market for legal services."

In late September, the Oregon State Bar Board of Governors signaled it was interested in licensing paraprofessionals who could offer limited legal advice and allow those without JDs to sit for the bar.

And in October, the Arizona Task Force on the Delivery of Legal Services called for the elimination and modification of state ethics rules that prevent nonlawyers from co-owning a law firm.

The commonalities between all four states' approaches may be an indication of a growing consensus around rules reform, even if it might not be known what the outcome of these efforts looks like for some time.

"We know what needs to be done," Mendoza says. "It's just frustrating that it can't happen quicker." ■

Hacking Away

Hacking used to be the antithesis of what it meant to be a lawyer. Now, thanks to Legal Hackers, hackathons are an important tool for making law more accessible.

BY STEPHANIE FRANCIS WARD

Conventional wisdom in the legal profession dictates that attorneys should have all the answers, mistakes can be detrimental, and people who call themselves “hackers” are known for identity theft and espionage and must be avoided at all costs.

But things are changing. In 2012, the Brooklyn Law Incubator & Policy Clinic held what it called a “legal hackathon.” A combination of “hack” and “marathon,” hackathons typically involve a one-day code sprint in which computer programmers try to come up with a program or application to reach a specific goal. In adding the legal aspect, The Brooklyn hackathon had participants focus on ways to improve the then-proposed Stop Online Piracy Act and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act and talking about new ways to regulate IP infringement. The bills, which were supported by the entertainment industry, ultimately failed.

For Legal Hackers, however, the main issue was that there was no transparency with the bills, and it seemed that lawmakers were not getting input from relevant stakeholders, says Phil Weiss, a 2012 Brooklyn Law School graduate and Legal Hackers founder who also serves on the group’s board of directors.

“We hacked the act. We were looking to get people together to talk through how we can address the policy concept like hackers, not lawyers,” says Weiss, adding that their first hackathon offered people a forum that was less results-oriented and focused more on discussing new ideas to regulate intellectual property infringement. Weiss, now a New York City sole practitioner

who does corporate work, adds: “The idea was that if we got enough lawyers, technologists and policy thinkers in the room, we could probably come up with a policy that’s better than what Congress was doing at that time.”

That event led to monthly meetup groups, initially in New York City, where people would develop and talk through various problem-solving ideas.

Today Legal Hackers has more than 150 chapters across the world and has organized many more legal hackathons. Some of the things produced at these hackathons have included a bot that checks real estate listings for problems, and a phone app that could be used in place of cash bail, with check-ins done through codes defendants read aloud and record with cellphone cameras.

“What Legal Hackers [does] is provide a forum and a place to talk about issues and learn from one another,” says Jameson Dempsey, a member of Legal Hackers’ board of directors who works as a government affairs counsel with Loon, the Google offering that delivers internet service to unserved and underserved communities through a network of stratospheric balloons.

Going mainstream

The term “hacking” has lost much of its negative association, he adds, thanks in part to the proliferation of “life hack” articles.

The legal profession is coming around too. Both Latham & Watkins and BakerHostetler were sponsors for the 2019 Legal Hackers International Summit, which took place at Brooklyn Law School and was attended by both chapter leaders and “legal innovation thought leaders,” according to the group’s website. Discussion topics included open-source legal technology

and coalition-building for tech policy. And Legal Hackers chapters have been involved with multiple American Bar Association events, including one at the 2014 Annual Meeting designed to increase access to justice, as well as events at ABA Techshow, such as a 2017 event to help veterans with their legal needs.

“CEOs of giant companies started hosting hackathons. People recognized that there’s some sort of ethos behind this. Not only is the term acceptable, but it’s successful,” Weiss says.

Lauren Mack, who attended the 2012 Brooklyn Law hackathon while a student at Yeshiva University’s Benjamin N. Cardozo School of Law, says that she was drawn to the group because their offerings are structured differently than most legal networking events. Mack is now a copyright and trademark lawyer with New York City’s Masur Griffiths Avidor and a member of Legal Hackers’ board of directors. “We are very much about collaboration and openness,” she says. “Someone at a Legal Hackers event would describe a project they’re working on or would like to do, and people would say, ‘That’s really cool, how can I help?’ As a young attorney trying to network, you don’t really get that at a standard bar association event, where you’re typically trying to get a more experienced lawyer’s attention who doesn’t want to hire you.”

Other legal hackathons have focused on improving web accessibility for people with disabilities, discussing regulation around revenge porn, and developing an app to help victims of a fire in West London access support services.

“When you bring in smart lawyers, smart technologists and smart policy-makers to share ideas, amazing things will happen,” says Jonathan Askin, founder and director of the Brooklyn Law Incubator & Policy Clinic. He had wanted to do a legal hackathon for some time—taking inspiration from New York City technology hackathons that started around 2007—but the dean told him no. After that dean left, a friend of Askin’s was put in as acting dean, and his idea was greenlighted.

“It was sort of like a Charlie Brown, *Peanuts*-like moment, where there was no adult supervision. That’s what gave us the courage to do it,” says Askin, once a senior attorney at the Federal Communications Commission who chaired the internet governance working group for Barack Obama’s 2008 presidential campaign.

Askin admits that hackathons, where mistakes are seen as learning experiences and it’s OK to not have all the answers, are a different experience in legal education. “Lawyers are trained to be perfect and not speak until they have the right answer. That might work in practice, but it certainly doesn’t work in law school. Law school should be a place where we have this little lab and experiment widely,” says Askin, 54.

At the 2012 hackathon, he adds, there were a fair amount of lawyers sitting in a room talking about policy, but no one was building things.

“It was a hackathon on training wheels,” Askin says. Then they started bringing in designers and entrepreneurs, and the students were paired into teams because that gave them more courage to ask questions about topics they don’t know well, he explains. “The worst scenario is when they close up. They think they don’t know enough and can’t play a significant role. That’s been

historically what we as lawyers are like in hackathons,” he adds.

Shutting down nonlawyers is also avoided at hackathons, says Mack, 32. She adds that Askin has taught them that rather than telling someone they can’t do something because of existing law, a better answer is “yes but ...”

Lawyers are concerned about communicating too, according to Weiss, 33. “They’ll say: ‘How can I talk to an engineer if I don’t speak their language?’” He says his response is usually: “You won’t know until you try.” ■





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A Rewarding Mission

The Legal Services Corp.'s Technology Initiative Grants Program team is trying to increase access to justice—one project at a time

BY STEPHANIE FRANCIS WARD

Twenty years ago, technology wasn't always celebrated by public interest lawyers, Joyce Raby says.

"I had a lawyer follow me out to my car, yelling at me that his clients were too stupid to use fax machines," says Raby, who was a program analyst for the Legal Services Corp. from 2000 to 2008. Raby is now executive director of the Florida Justice Technology Center and serves as co-vice chair of the State Bar of California's Task Force on Access Through Innovation in Legal Services (see "Outside the Box," page 52).

However, she saw the transformative potential of technology and its ability to help all people attain access to justice.

Together with LSC program counsel and grant administrator Glenn Rawdon, Raby created the Technology Initiative Grant Program, which awards regional LSC offices money for creating technology plans that help low-income people with their legal needs.

She says the legal profession didn't understand the automation possibilities of technology, and some legal aid lawyers believed only people—not computers—could help clients with problems.

Photo illustration by Brennan Sharp/ABA Journal; photos courtesy of James Sandman, Joyce Raby and David Bonebrake; Shutterstock

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Their belief was that using technology would create a second-tier legal system to the traditional model of one attorney for every client.

“That model doesn’t scale, and it’s never going to reach all the people who need assistance,” Raby says. She adds that for self-represented litigants who don’t qualify for legal aid, it’s better to have access to high-quality information and do-it-yourself tools than to settle for no assistance at all.

Despite all of the resistance, Raby and Rawdon both say that to their surprise, their LSC bosses did not back down from criticism about technology. They also point out it was unique that management oversight was not onerous or burdensome and that LSC was willing to take a risk to try something new.

“Because LSC took the position of letting us make structural decisions based on what we were hearing in the field and overall objectives of the program, we were able to be very responsive to the legal aid community, and that’s kind of what made the TIG program useful,” Raby says. “It was either that they didn’t understand the impact of what we were getting ready to do, or they had an inkling that it was going to be big and didn’t know how to manage it.”

And as legal aid directors saw the successes that other offices were having with technology, they opened up to it, Rawdon says.

Specifically, intake workers in the Ohio offices were saving 14 to 16 minutes per application once they adopted online intake forms, allowing them to process more of them.

“I won’t say there’s been universal acceptance. I’ve been kind of disappointed that programs aren’t more willing to adopt automated documents for staff usage,” he says, adding that some lawyers still think that if you don’t physically fill out every form for every client, you might miss an error.

However, some legal aid directors who originally opposed the idea of introducing technology to client services have since changed their minds after seeing positive results, Rawdon says.

“Access to justice is about people feeling the system is fair.”

—Vivian Hessel

“They don’t have to be proficient in using technology, but as long as they see the benefit and trust staff people who are proficient in technology, the programs really do work,” he says.

Since 2000, approximately \$65 million has been awarded by the TIG program. Among the offerings by grant recipients are automated forms and document assembly for Michigan residents, and a mobile interface enhancement that allows people to apply for services with the Montana Legal Services Association. That project also added texting capacity with the office’s case management system so that clients get text reminders about appointments and can submit forms into the system from their phones.

In 2018, the TIG program received 58 letters of intent that were whittled down to 38 full applicants. Ultimately, 26 grants were awarded. James Sandman, president of the LSC, decides who gets the grants. When the TIG program started, he says, many legal aid offices didn’t even have websites.

“The first order of business was to fund website development of every state and territory with two populations in mind—first, low-income people, and second to ... pro bono lawyers, who might be taking on a client where they needed help,” he says.

When considering TIG proposals, Sandman looks for ideas that can help various legal aid offices rather than just the grant recipients.

He mentions a 2018 grant for \$212,000 to Philadelphia Legal Assistance to expand software tools for a program known as Upsolve, which generates Chapter 7 bankruptcy forms through a series of questions. (See “Going for Broke,” September-October 2019, page 53.)

“That has a nationwide impact because bankruptcy is a matter of federal law,” Sandman says. “We’ve also funded

projects for online intake to make legal services available to people 24/7.”

Rather than being given a lump sum, TIG money goes to recipients in pieces as project milestones are reached. If something doesn’t go as expected, the plan can be modified, which helps the offices learn from their mistakes and ultimately have better outcomes, says David Bonebrake, a program counsel and grant administrator with the program, who with Rawdon and grant administrator Jane Ribadeneyra helps applicants with proposals.

One TIG recipient, Legal Aid Chicago, is working on a project that involves integrating natural language processing and other artificial intelligence tools into its intake system. “Think Alexa or Siri,” says Vivian Hessel, Legal Aid Chicago’s chief information officer. Her organization in 2018 received a \$266,000 TIG award, which will be paid over three years.

“Now, typically, a human listens to or reads the problems,” she says. The software can review messages and pull out potential issues quicker than a person could, and then send the messages to the right staff member for review. Once the project is in place, she adds, the call-in line will still be available as well.

“A person might say, ‘I’ve been evicted because I couldn’t pay my rent.’ The landlord is not doing anything wrong, and the reason they could not pay their rent was because they were terminated from their job and were not paid by their employer. That’s the legal issue,” Hessel says. “The software can’t pick up on that, but it pinpoints the information quicker for the attorney.”

The office has never been able to help everyone who qualifies for legal aid in Chicago, she adds, and the software will allow one full-time employee to review three times more intakes than before. “It’s a lot better for a person with a legal issue, because a lot of times people feel like they are not being heard. Access to justice is about people feeling the system is fair. Even if you can’t help people, just being heard is important to them,” Hessel says. ■

Data Mining

Measures for Justice is bringing about reform by traveling the country to discover, disseminate and distribute criminal justice data

BY JASON TASHEA

After finishing law school at Stanford University and clerking at the Atlanta-based 11th U.S. Circuit Court of Appeals, Amy Bach spent her time sitting in the back of county courtrooms, listening and taking notes.

What she witnessed was a mess. She saw one judge set bail rates much higher than his colleagues, and she came across a local prosecutor who hadn't brought a domestic violence charge in over 20 years. She also met many defendants who pleaded guilty even though their lawyers didn't know the facts of their cases.

But she could only show others these problems when she could find them, which was a challenge in a system without data.

"I really learned what justice looked like in big cities and small corners of this country," says Bach, 51, who worked as a freelance journalist at the time.

She brought these individual stories of wrongdoing together in her book *Ordinary Injustice*, published in 2009. Not just a collection of woe, the book was a call to action for a new system of oversight built on data and performance metrics.

"In the absence of metrics, each single flawed case can be put down to he-said, she-said mismanagement," she wrote. While acknowledging that metrics aren't a panacea, she added: "They are the tools we need to ask for the courts we deserve."

In 2011, Bach took herself up on her proposal and founded Measures for Justice. While starting as a team of two contractors without funding, the Rochester, New York-based nonprofit employs 40 people today. Together, they travel the country unearthing, cleaning and publishing county-level criminal justice data in what they hope will be each of America's 3,141 boroughs, counties, independent cities, parishes and the District of Columbia.

"I found her idea really interesting, and I very quickly understood what she was trying to accomplish," says Bill Ackman, co-trustee of Pershing Square Foundation, which provided a donation of \$3 million in 2014. "Just by making the data available, she could change the world."

How they do it

In 2017, the organization released data from its first six states through its online portal: Florida, North Carolina, Pennsylvania, Utah, Washington and Wisconsin. While the data available varied from state to state, it included the time it took to resolve a felony case, the use of jail beds and the length of prison sentences. The organization expects to release another 14 states' data by the end of 2020.

To make this work possible, the organization has amassed a cohort of data scientists, criminologists, software developers and researchers. With a strong sense of mission and Bach's energy, the organization has attracted those from within and outside of the world of criminal justice.

The organization's director of operations, Samantha Silver, 45, has an executive MBA and previously worked in marketing before joining the organization as a consultant in 2011. She had not worked in criminal justice. By contrast, Mikaela Rabinowitz, 40, joined in 2018 and is currently the director of national engagement and field operations after a decade working in criminal justice system evaluation and advocacy.

"Across both of those jobs, one of the critical challenges that I saw was a lack of data," Rabinowitz says. Measures for Justice "felt like exactly what was needed."

Gipsy Escobar, 45, started to moonlight at Measures for Justice in 2012 while keeping her tenure track professorship at Loyola University Chicago. "What really made me leave academia to join MFJ was the immediacy of the impact

that we could have,” she says as the current director of innovation research.

The organization’s zeal is not only winning over employees, but criminal justice stakeholders as well.

“They’re very passionate about bringing transparency and good data to the criminal justice system,” says Jeff Reisig, the elected prosecutor for Yolo County, California. “I could hear it in their voices.”

Reisig, who has spent more than two decades in the prosecutor’s office, is excited about Measures for Justice’s potential to clean up the state’s data situation and improve criminal justice reform.

“The reality then—and frankly the reality still now—is that data in California is very fragmented, it’s not comprehensive,” he says, adding that there’s no central repository where someone can track a case. “When it comes to criminal justice data in California, I feel like we’re still driving a horse and buggy.”

Since having embraced more aggressive criminal justice reform in 2014, California has recategorized some nonviolent felonies as misdemeanors, curtailed the use of adult charging of youth offenders, legalized marijuana and greatly curtailed the use of cash bail, which will be put to a public vote in November 2020.

Reisig says that without better data, “a lot of these reforms are shooting into the wind, hoping these things work.”

The situation may be changing, however.

Last fall, the state passed a law that will improve access to criminal justice data and establish new reporting requirements across the criminal justice system. The jump-off for this law was a report from Stanford University on the lack of criminal justice data in the state and a similar, successful legislative effort in Florida.

Measures for Justice was central to both.

In Florida, legislators realized the gap in the state’s criminal justice data and passed a first-of-its-kind law in 2018 that will lead to the collection of about 140 data points across the criminal justice continuum—from arrest to release—standardize that data across the state and publish it online.

“I never expected the Florida legislation,” Bach says. But she’s embraced the new angle to their work, because “this is clearly where the puck is going and where people want to play.”

Now, the conservative legislative agenda-setting organization the American Legislative Exchange Council has published model legislation based on the Florida law, and the criminal justice reform committee at the nonpartisan

Uniform Law Commission is considering the topic for further review. As of the fall, a half-dozen other states are looking to pass similar legislation, Escobar says.

Bach and her team expect that as more data becomes available, people will build new tools that can provide insights to journalists, policymakers and criminal justice system stakeholders like courts, defense lawyers and prosecutors.

Meanwhile, as the organization barrels ahead, Silver says that its rapid success comes down to the people involved.

“Our team and leadership, we are much more than the sum of its parts. We have an amazing ability to challenge each other in a healthy way and strive for excellence,” she says. “We’ve been quite successful because of that.” ■

