

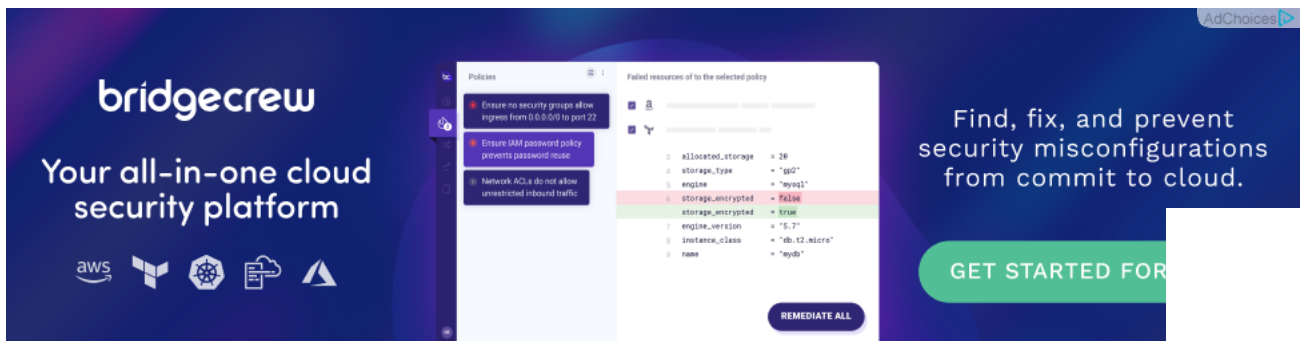
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Another Perspective on the Legal Services Consumer in the Arena

The Jan. 5 op-ed by James Gorton and William Winslow promotes a number of misconceptions about allowing consumers to directly hire licensed paraprofessionals, says Tom Gordon of Responsive Law.

By **Tom Gordon** | January 25, 2021 at 09:39 PM



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Tom Gordon of Responsive Law. Courtesy Photo

The pandemic has exacerbated California's existing legal needs crisis by increasing the number of legal problems people face. Housing, family law, employment, and navigating government benefits are among the areas where Californians have faced a growing number of legal problems, while the economic downturn has left them even less able to afford a lawyer.

One way to alleviate this crisis would be to allow people to seek the assistance of licensed independent paralegals in handling their legal problems. Consumers would benefit from having a range of expertise and prices among legal service providers.

Such a range of consumer options already exists in health and medicine. People are not required to go to a doctor to get a flu shot or to get advice on drug interactions; they can go to a pharmacist. They don't need to ask a doctor to assist them in reconditioning a muscle after surgery; they can go to a physical therapist. If people were required to treat every health issue through a doctor, rather than through other professionals, help would be less available, and medical costs would be even higher than they are now. Worse yet, it would replace the specialized expertise of these other health service providers with the lesser competence of a doctor.

Just as not every medical problem requires a doctor's help, not every legal problem should require a lawyer's help. A paralegal who has worked under a lawyer for 20 years preparing forms for uncontested divorces is far more competent to do so than 90% of lawyers. A legal assistant at a housing nonprofit is far more knowledgeable about housing law and landlord-tenant court procedure than any lawyer who doesn't practice in that area. Studies from England and elsewhere confirm that paraprofessionals provide legal services that are as good or better than lawyers do. And in most cases, tenants facing eviction and middle-class Californians seeking divorce today get no help from anyone at all.

The State Bar of California is exploring how to fix this mismatch of resources through its Paraprofessional Working Group, which is charged with developing recommendations for a program to license or certify paraprofessionals to provide

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direct services. These professionals could make reliable, regulated legal help more affordable and accessible to the vast majority of Californians who are unable to afford a lawyer charging hundreds of dollars per hour.

The Jan. 5 op-ed (<https://www.law.com/therecorder/2021/01/05/the-legal-services-consumer-in-the-arena/>) by James Gorton and William Winslow promotes a number of misconceptions about allowing consumers to directly hire licensed paraprofessionals, as well as about the working group's proceedings.

First, the authors conflate two separate initiatives of the State Bar. The State Bar has created a Closing the Justice Gap Working Group that will explore concepts such as a regulatory sandbox that would allow new business models for legal services. While such analysis is sorely needed, it is separate from the Paraprofessional Working Group.

The authors also appear to be under the impression that the working group has been meeting in "semi-darkness" and is ready to propose regulations that would devoid of consumer protection. That's false. The meetings are fully open, and the working group engages in detailed discussion of possible regulatory options, with the public interest always at the center of discussion.

Additionally, the authors repeatedly reference the bogeyman of artificial intelligence (AI). They mention it so often that it feels like—paraphrasing President Joe Biden in another context—every sentence consists of a noun, a verb and "AI."

This is misleading, as AI is not a central part of the discussion around paraprofessionals. To be sure, paralegals may use technology, just as lawyers use computer-aided research tools and car mechanics use computer diagnostics. Speculation that one of a professional's tools might be flawed on some occasion is no reason to completely ban the profession. At most, it's a reason to properly regulate the technology and its use.

Finally, the authors describe the laws of supply and demand as "faith-based," claiming that an increase in the supply of legal service providers will not necessarily lead to a decrease in cost. They claim that it is "naïve to think the general principle of supply and demand will automatically apply where the prospective consumers do not know how to differentiate among suppliers and make good decisions based on quality of service and value."

But to the extent that consumers have imperfect information about the comparative value of lawyers and paralegals, it's because lawyers are notoriously opaque in providing information about price and value. Gorton and Winslow give the example of a paralegal charging \$6,000 for a matter that could have been handled at the same price by a lawyer. If a lawyer provides a superior service to a paralegal, surely the lawyer can persuasively make that case to a prospective client. And if the lawyer's prices are lower, then the lawyer can advertise that fact. Regardless, using one example of an overpriced paralegal as a reason to ban consumers from using them makes as much sense as barring consumers from using lawyers because Rudy Giuliani is charging a client \$20,000 per day.

In mentioning the conduct of existing independent paralegals, the authors surface an important point: A regulated market for independent paralegals would not look like the current gray market for legal help from those who aren't members of the



Faber. Consumers using these service providers are currently protected by generally

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applicable contract and tort law, as well as by any applicable consumer protection statutes. However, through licensing and regulation, we can bring these services out of the gray market where scam artists thrive, and provide consumers additional assurance of competence and oversight.

There are examples of other independent paralegal programs that the State Bar is studying. Washington State's program has helped middle-income consumers with family law issues, but remained small. With requirements for education and experience that were almost as expensive and time-consuming as a JD program, it was no surprise that the total number of licensees was only in the dozens. By contrast, Ontario, Canada licensed over 1000 paralegals in 2019 alone (compared to about 2400 lawyers), and its paralegals have provided a greater benefit to consumers.

Consumers would benefit from being able to use independent paralegals. If these service providers were licensed and regulated by an independent regulatory body, they would pose no greater risk of consumer harm than lawyers, and help lots of people who now get no help at all. If lawyers fear competition from these service providers, they need to let consumers know how they provide greater value and let consumers make a free, informed decision. The State Bar should base its decision about paralegal licensure on evidence about what best serves the public interest, not on the misleading, self-interested claims of lawyers.

Tom Gordon is executive director of *Responsive Law*. Gordon is one of the nation's leading experts on access to the legal system, innovation in legal services, and regulation of the legal industry. He has testified many times before state legislatures, federal administrative panels, and the American Bar Association.

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