Hi, thank you for having me. Stanford’s Center on the Legal Profession focuses on legal services regulation, access to justice, and the relationship between the two. And I have spent most of the last few years working with states around the country, and particularly in California, on these issues around how we might change the rules around who can provide legal service and how in order to increase access to justice.

Steve asked me to speak with you today – and I appreciate the opportunity – because we just released a white paper called “The Surprising Success of Washington's Limited License Legal Technician Program,” co-authored by a terrific 3rd year law student at Stanford, Noelle Smith, and me. I will send a copy of it to you as my comment to the sunsetting rules.

I wanted to do three things today in the next 10 minutes: (1) share the findings of our white paper; (2) discuss and hopefully dispel some common myths about these programs; (3) talk briefly about the sunsetting decision and a possible way forward. And then take any questions.

I. Findings of White Paper

For this white paper, we interviewed different stakeholders – LLLTs, judges, clients, and lawyers -- and looked at the available public data and other information to evaluate the program. We found that the LLLT program was demonstrating real success in expanding access to justice in Washington for thousands of people each year.

Benefits of Legal Technicians

LLLTs allowed for more efficient proceedings and better decision-making for family law judges and commissioners by reducing procedural errors, submitting high-quality work product, and preparing clients to present their cases effectively.

One family law commissioner said that “with LLLTs, I saw an immediate improvement in the information I received in family law and domestic violence cases.” Another judge reported that having a LLLT involved can reduce trial time by about one-third because the judge did not have to explain to the parties what information he would need and could rely on LLLTs for proposed orders.

Adding LLLTs allowed lawyers to expand their practice by capturing a previously untapped market. Lawyers who hired LLLTs report that the relationship between LLLTs and attorneys at the firm is “absolutely symbiotic” with LLLTs serving clients the firm would have otherwise turned away and attorneys assisting LLLTs in matters that fall outside their scope of practice.

LLLTs provided expanded legal services to traditionally underserved communities. One bilingual LLLT in Eastern Washington reported that 90% of her clients were Spanish-speaking
individuals. Commissioner Jonathon Lack, a King County judge who handles pre-trial litigation in family law cases, spoke to the working group in CA and observed that the program “provides access for women and people of color, who are also getting better results in their cases.” We also heard directly from a LLLT client, Christina in Federal Way. This will just take a few minutes, and I think well worth your time.

Challenges for the Program

The program has certainly faced some challenges. So far, there are 46 active licensees. For a new program just five years in with no marketing budget, and considerable education and experience to complete before licensure, I’m not sure we could have expected much better.

But why not more? Well, the barrier to entry was fairly high. The requirement that LLLT candidates work for 3000 supervised hours before practicing is a considerable hurdle, and twice what most other states are requiring. Nonetheless, over 200 students were in the LLLT pipeline when the court chose to sunset the program, with interest increasing. It’s not true that there was a lack of interest in the program.

At the time of sunsetting, the LLLT Board had proposed expanding the program to two new practice areas, and reducing the experiential requirement to 1500 hours. Based on those changes and the pipeline, it seems quite reasonable to suggest that the program would be on track to become self-sustaining by 2029.

What about the cost? The LLLT program cost less than $200,000 per year to the WSBA. That means the cost of administering the program was just $7 per attorney per year, and less than 1% of the WSBA budget.

It seems, then, that it was not the cost per se, but the idea that lawyers were subsidizing the competition. The WSBA Treasurer argued that it was “tremendously unfair” for lawyers to be subsidizing the program, but this idea of subsidy and unfairness ignores the Bar’s dual role.

As you know, you are the regulator of the legal services market, and you have delegated considerable regulatory authority to the WSBA – as do most state supreme courts. And so as the WSBA acknowledges on its website, it is “part of the judicial branch,” performing a government function.

So lawyers’ annual payment to the bar in WA are both “dues” to the trade association and “fees” to the regulatory agency, and the fees can be seen as the price of being the last self-regulating profession.

Justice Owens, you raised an interesting point in your dissent from the original order creating the program in 2012 – perhaps the regulatory agency for legal professionals should be publicly funded, and not by “user fees.” But if that were the case, I have a feeling lawyers would not make up 100% of the members of the Board of Governors. There are tradeoffs involved with the current structure.
I also should say that we can't ignore the gender dynamics here: we have a mostly male profession – lawyers – a small but vocal group of whom are using their power to stop members of a largely female profession – paralegals – from advancing in their careers, developing some independence and making a difference.

II. Common Myths

As I've been talking to people around the country, there are a few common reactions that arise to these programs that are important to unpack. These reactions are understandable, but ultimately myths and therefore harmful to accurate assessment of these programs.

**Myth #1: The Alternative is a Lawyer, and Allowing People Without JDs to Practice Creates Risk of Consumer Harm.**

The reality is that the people represented by LLLTs are otherwise going through the legal system alone. In family law court, cost is the most consistently referenced motivation for proceeding without an attorney. The alternative is no help at all – not a lawyer – and the most harm to consumers is done by denying them such help. These are people generally who make a bit too much for qualify for legal aid. Denying people of modest means qualified, affordable help causes harm, it does not protect people from harm.

**Myth #2: LLLTs are Second-Class Representation, and Creates a Two-Tiered System of Justice**

One UW law professor told us that LLLTs are better prepared to practice family law than law school graduates. And research from the U.S. and around the world shows that it is the degree of specialization and experience that are the predictors of success in representation, more than whether or not someone is a lawyer. Indeed, this research shows that people who are not lawyers – like LLLTs – do as well or better in cases that are not overly complex.

And in terms of two-tiered justice, we have a two-tiered system of justice now – the wealthy and large businesses who can afford representation, and the poorest among us who qualify for a legal aid lawyer is one tier – and everyone else who get nothing is the other. This helps people who are not wealthy move into that more privileged tier.

**Myth #3: More Legal Aid and Pro Bono Will Solve the Problem.**

I absolutely support more legal aid funding, and think that the pro bono work that lawyers do is enormously important in addressing the justice gap. I know you have a Moderate Means program which is also helping. But together, these cannot come close to addressing the scale of the problem.

Our Center is talking to states all over the country who are working on access to justice. Everyone realizes that past efforts have not come close to addressing the problem. And there are really only two strategies that everyone is talking about on how to increase access to justice – this is one of them, the use of paraprofessionals in certain kinds of cases. The other is nonlawyer ownership of legal service providers to allow businesses to get the investment and expertise they need to scale and serve a mass market. Think Turbotax for divorce, for example. The use of paraprofessionals like
LLLTs is actually much less threatening to lawyers because these paraprofessionals are serving segments of the market that lawyers simply do not.

Your sunsetting decision indicated this program was not the most effective way to address access to justice, but what is the alternative? What is the strategy in Washington for addressing this huge segment of the population that needs the help?

III. Sunsetting and Way Forward

I want to just spend a minute or two on a possible way forward, and then I'll wrap up. My understanding of what happened with your decision last year is that you did not have any evidence of the benefits before you. And so you understandably focused on the costs. This white paper provides some evidence of the benefits.

I do not think that you could have made the decision you did if you had information about the benefits of this program to people of modest means facing critical moments in their lives – many of these people are the essential workers we have rightly valorized during the pandemic. The grocery store workers, the nurses, the people who are giving us our shots.

I don’t know any of you personally, but I have read your bios and seen your professional values and commitments. I know you chaired the Access to Justice Commission, Justice Gonzalez, and that you chair the Minority and Justice Commission, Justice Yu, and you chair the Gender and Justice Commission, Justice McCloud. You all know how difficult and intractable these problems are, and this is a model that is making a difference on the issues you care about.

Justice Johnson, you helped start the program and expand the LLLTs’ roles in 2019 – so you must know its promise. Justice Montoya-Lewis and Justice Whitener, I know you each spent years as trial court judges, and so you must know how difficult it is for everyone – judges and litigants alike – when people are self-represented.

So it is implausible to me that knowing the access-to-justice benefits, each of you – any of you -- would deny help to people facing critical issues like child custody or domestic violence – in the existing practice area of family law – or facing the denial of unemployment or disability benefits, a dispute with their landlord, or financial hardship from medical debt – issues that LLLTs could handle in the two new proposed practice areas.

I do not think you would have done that if you had full information about the benefits of the program. And of course there was no way to have that information because the information did not really exist at the time.

The good news is that there is a relatively easy way out of this. Our white paper provides some information about the benefits of the program, but there’s actually an even more thorough evaluation of the program that was underway. The National Center on State Courts (NCSC) was in the midst of doing a full-scale evaluation – supported by the Court – at the time of the sunsetting. They did surveys of lawyers, judges, LLLTs, I believe clients. They have been collecting data on LLLT cases and outcomes. This is an independent, well-respected organization doing rigorous research. But they brought the whole thing to a halt after the sunsetting decision.
It seems to me that there is a relatively easy solution here: you could simply hold off on finalizing these rules implementing sunsetting until the NCSC finishes its evaluation, which they are willing to do if you kept the program open. Then you could make a decision with full information – not just about the costs, but about the benefits of the program as well. Since the proposed rules already contemplate keeping the pipeline open well into 2022, this would be a relatively modest change, but an important one, both for the people of Washington and for the nation.

Thank you for listening and I’m happy to take questions.