

# Do It Yourself Legal Services? Domestic Violence Victims May Depend on It

Sabrina Marquez\*

*“I didn’t know there was such thing as a family court to help people like me.”<sup>1</sup>*

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## INTRODUCTION

Roia Atmar’s former husband had always been controlling. But after she had her first child, his tactics escalated. Roia was not allowed to have a job or friends. Her husband controlled every aspect of her life and who she communicated with. He was physically and verbally abusive on numerous occasions. He frequently told Roia and their children that he could do anything he wanted because he was the one working and paying

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\* Seattle University School of Law, J.D. Candidate 2021. This Note is dedicated to the survivors of domestic violence and victims who we have lost at the hands of intimate partner violence. May our legal communities continue to find new ways to advocate for a system which protects and fights for vulnerable victims everywhere.

1. Melissa Davey, *The Most Dangerous Time*, THE GUARDIAN (June 2, 2015), <https://www.theguardian.com/society/ng-interactive/2015/jun/02/domestic-violence-five-women-tell-their-stories-of-leaving-the-most-dangerous-time> [https://perma.cc/DE2A-LNJA].

the bills.<sup>2</sup> No one in Roia's world knew about the abuse—others thought her husband adored her and they had the perfect family. Her husband's outbursts intensified as time went on, until one day he doused Roia in turpentine and set her on fire. Roia was hospitalized for three months with severe injuries. Even as she lay in the hospital bed with extreme burns, she still did not feel she could leave. "If I knew I had [an] option, I would have left a long time ago. That was one of the main reasons I did not attempt leaving him."<sup>3</sup> Roia feared that if her husband became suspicious, he would kill her or take her kids away<sup>4</sup>—he had already attempted to kill her, so what would his reaction be if she actually found a way to escape?

Roia's husband told the hospital staff that the fire was accidental and happened as a result of her scarf catching fire while warming herself. He never left the room while Roia was conscious, even when a hospital social worker came to talk to Roia. It finally took the intervention of an investigating police officer who explained to Roia what a restraining order was and how she could obtain legal help to escape her husband.<sup>5</sup> Roia stated that before this intervention, she was completely unaware that there was a family legal system that could help her and her children escape their abuser.<sup>6</sup> Victims in Roia's position should not have to suffer a life-threatening assault to discover that legal assistance is available to them. Yet how can a victim like Roia, who is constantly being monitored by their abuser and with no family, friends, or financial resources, get the resources and help they so desperately need before a life-threatening emergency occurs?

Domestic violence victims and individuals from disadvantaged communities urgently need legal assistance, yet this complex, expensive system remains elusive to a majority of them.<sup>7</sup> More than 70% of Washington's low-income households experience "at least one civil legal problem each year on matters affecting the most fundamental aspects of their daily lives."<sup>8</sup> Individuals with one legal issue are more likely to have several other serious legal problems that they are unaware of.<sup>9</sup> The matter continues to proliferate; the average number of civil legal problems per household has tripled over the past decade in the state of Washington.<sup>10</sup>

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2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See generally WASH. STATE SUP. CT., CIVIL LEGAL NEED STUDY UPDATE COMMITTEE, 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015).

8. *Id.* at 3.

9. See *id.* at 5.

10. *Id.*

Despite the tremendous need these individuals have to seek advice from a professional, 76% of these low-income individuals and families face their problems without the help of a lawyer, no matter how complex or life-changing their problems may be.<sup>11</sup>

Low-income individuals and families who are already struggling financially see their legal issues “compounded by race, ethnicity, age, disability, immigration status, or status as a victim of domestic violence or sexual assault.”<sup>12</sup> Principal problems among these vulnerable groups involve issues arising from family conflict—including divorce, separation, child custody and support—and other problems associated with being a victim of domestic violence or sexual assault.<sup>13</sup> A large percentage of low-income Washington residents experience at least one civil legal problem, but residents who are, or who have been, a victim of domestic violence or sexual assault are certain to experience several civil legal problems.<sup>14</sup> Furthermore, 100% of domestic violence victims surveyed say they have family law-related problems, and 62.5% of these individuals have children whose wellbeing may depend on the legal system to sort these issues out.<sup>15</sup>

This Note will address how encouraging nonlawyer Internet programs to engage in limited areas frequently considered the “practice of law” will increase the ability of vulnerable groups, especially victims of domestic violence, to receive crucial—and potentially lifesaving—legal assistance. Part I will outline the rise of Internet legal service providers (ILSPs), who have innovated software programs that help clients fill out and file a wide assortment of legal documents, as well as the negative response these services have received from state bar associations and the wider legal community.<sup>16</sup> Part II will discuss why a different method of providing legal assistance is crucial to helping victims of domestic violence, who often find themselves in tough financial situations and in need of an inconspicuous means of receiving legal help.<sup>17</sup> Part III will address how ILSPs are a foray into the future of attorney–client relations in an attempt to encourage the legal community to accept this novel technology rather than dismantle it. Specifically, clients often turn to Internet search engines to solve their legal issues, and these providers offer attorneys an ability to streamline the client referral process.<sup>18</sup>

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11. *Id.* at 15.

12. *Id.*

13. *Id.* at 8.

14. *Id.* at 13.

15. *Id.*

16. *See infra* Part I.

17. *See infra* Part II.

18. *See infra* Part III.

Finally, Part IV will examine common arguments against the support and proliferation of ILSPs. In particular, Part IV will address how fears regarding the unregulated nature of these providers and the potential harm they may cause could be mitigated by easily adopting regulations.<sup>19</sup> Part IV also provides Washington with examples of other states that have loosened their position on heavily regulating the “practice of law,” without major consumer detriment, establishing that domestic-violence victims will not be harmed by an Internet-based alternative to traditional attorney advice.<sup>20</sup>

### I. THE EMERGENCE OF INTERNET LEGAL SERVICE PROVIDERS

Technological innovations have created computerized methods that have improved and streamlined just about every service we can think of.<sup>21</sup> The ubiquity of the Internet has given consumers access to a wide variety of information and resources, which previously would have only been available to the experts or professionals in the subject’s field. ILSPs, such as Rocket Lawyer and LegalZoom, have capitalized on the modern technological provision of services in the legal industry.<sup>22</sup> These companies have revolutionized the provision of legal services and given consumers the ability to obtain services—traditionally provided by attorneys for hefty fees—from the comfort of their own home without the necessity of hiring an attorney. ILSPs offer a wide variety of interactive legal services, most of which utilize branching software that asks consumers a series of questions and generates a completed form at the end.<sup>23</sup> This software can help customers prepare wills, form limited liability corporations, and file for divorce.<sup>24</sup>

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19. See *infra* Part IV. Washington itself already regulates certain types of nonlawyers to engage in limited legal document preparation services and could likewise extend this support to Internet providers. See *Limited License Legal Technicians*, WASH. STATE BAR ASS’N (Jan. 14, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians> [https://perma.cc/R5XJ-ZVWW].

20. See *infra* Part IV.

21. See, e.g., Mark M. Davis, James C. Spohrer, & Paul P. Maglio, *How Technology is Changing the Design and Delivery of Services*, OPERATIONS MGMT. RSCH. (Feb. 3, 2011), <https://link.springer.com/article/10.1007/s12063-011-0046-6> [https://perma.cc/LB73-DF66].

22. See Gerrit De Vynck, *LegalZoom Gains \$2 Billion Valuation in Funding Round*, BLOOMBERG (July 31, 2018), <https://www.bloomberg.com/news/articles/2018-07-31/legalzoom-gains-2-billion-valuation-in-latest-funding-round> [https://perma.cc/9RQN-8BMS]; Courtney Rubin, *Big Money for Cheap Legal Services*, INC. (Jan. 5, 2012), [https://www.inc.com/courtney-rubin/rocket-lawyer-raises-\\$11-million.html](https://www.inc.com/courtney-rubin/rocket-lawyer-raises-$11-million.html) [https://perma.cc/CCX5-VBQA].

23. See BENJAMIN H. BARTON & STEPHANOS BIBAS, *REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE FUTURE OF LAW* 125–127 (2017).

24. See *Online Legal Services*, ROCKET LAWYER, <https://www.rocketlawyer.com/article/online-legal-services.rl> [https://perma.cc/NR8F-B8FA]; *Why Us?*, LEGALZOOM, <https://www.legalzoom.com/why-us/> [https://perma.cc/FZ5D-7ZQ3]; *Mission*, LEGALATOMS, <https://legalatoms.com/about/> [https://perma.cc/3K73-WV2L].

The emergence of such new, groundbreaking technology has not been met with unanimous support by the legal community. As ILSPs have become more well known, they have faced heavy criticism from bar associations nationwide.<sup>25</sup> Both state bars and consumers have filed lawsuits against providers for engaging in the unauthorized practice of law.<sup>26</sup> This is not the first time that state bars have been averse to alternatives to professional legal advice. Family law reformers, consumer activists, and groups within the legal community have long recognized the immense need for reduced-price legal advice within the realm of domestic violence.<sup>27</sup> As these groups sought solutions to the burgeoning issue of family violence during the 1960s and '70s, they began creating do-it-yourself kits and services to facilitate pro se divorce and other legal remedies for indigent individuals.<sup>28</sup> Then, as now, these groups were limited by bar-initiated litigation under unauthorized practice of law statutes.<sup>29</sup> Prior to the 1960s, unauthorized practice prosecutions were directed almost exclusively against impersonators of attorneys.<sup>30</sup> But as ILSPs entered the market, seeking to solve the same problem roughly fifty years later, the scope of the unauthorized practice of law doctrine has expanded to “proscribe the drafting of documents and giving of advice related to legal rights.”<sup>31</sup>

Although states define the practice of law differently, most identify certain core activities: “appearing in court; preparing pleadings; drafting other documents that define people’s rights (such as deeds, wills, etc.); and providing general legal advice.”<sup>32</sup> Washington defines the practice of law, in relevant portion, as the following:

- (a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

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25. See, e.g., Florida Bar Advisory Opinion, No. SC14-211 (2015); *Disciplinary Couns. v. Alexicole, Inc.*, 822 N.E.2d 348 (Ohio 2004).

26. See *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053 (W.D. Mo. 2011); *LegalZoom.com, Inc., v. N.C. State Bar*, No. 11 CVS 15111, 2012 WL 3678650 (N.C. Super. Ct. Aug. 27, 2012); *LegalForce RAPC Worldwide, P.C. v. LegalZoom*, No. 17-cv-07194-MMC, 2018 WL 1730333 (N.D. Cal. Apr. 10, 2018).

27. See generally Deborah L. Rhode & Ralph C. Cavanagh, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104 (1976).

28. *Id.* at 109.

29. *Id.* at 105.

30. *Id.* at 110–11.

31. See *id.* at 111.

32. Thomas E. Spahn, *Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law?*, RICH. J.L. & TECH., Summer 2018, at 1, 9.

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).<sup>33</sup>

Unlawful practice of law is a crime—a single violation in Washington is a gross misdemeanor, with subsequent violations punishable as class C felonies.<sup>34</sup> Accordingly, ILSPs may be at serious risk of prosecution in Washington because most of their services involve selecting, drafting, and completing legal documents.<sup>35</sup> No clear guidelines currently exist on how the unauthorized practice of law relates to ILSPs in Washington. However, case law from other states may be helpful in determining whether providers are at risk of prosecution or suit in Washington.

One of the most illuminating cases regarding ILSP practices comes from the Eighth Circuit, where the U.S. District Court for the Western District of Missouri held that a portion of LegalZoom's services constituted the unauthorized practice of law.<sup>36</sup> There, the district court used Missouri's statutory definition of practice of law, which states the "drawing of papers, pleadings, or documents... in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission" is considered the practice of law.<sup>37</sup> The plaintiffs were a class of consumers who had utilized LegalZoom's legal document preparation services.<sup>38</sup> Todd Janson, the named plaintiff, allegedly paid LegalZoom \$121.95 for the preparation of his will.<sup>39</sup> Plaintiffs Ardrey and Ferrell allegedly paid LegalZoom \$249 for the preparation of the articles of organization for their joint business.<sup>40</sup> The class included: "All persons and other entities resident within the State of Missouri who were charged and paid fees to LegalZoom for the preparation of legal documents from December 17, 2004 to the present."<sup>41</sup>

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33. WASH. COURT GEN. R. 24.

34. WASH. REV. CODE § 2.48.180 (1995).

35. See generally *Why Us?*, LEGALZOOM, <https://www.legalzoom.com/why-us/> [https://perma.cc/9MQF-YLN4].

36. *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d. 1053, 1053 (2011) (concerning consumers who brought a class action against LegalZoom and sought money damages under the Missouri Merchandising Practices Act, along with injunctive relief to bar website from collecting money from its Missouri customers).

37. *Id.* at 1058.

38. *Id.* at 1056–57.

39. *Id.* at 1057.

40. *Id.*

41. *Id.*

Ultimately, the court had no issue with LegalZoom's provision of blank legal forms that customers may download, print, and fill in themselves. In fact, the court articulated that this service facilitates the right to pro se representation.<sup>42</sup> However, the court's opinion focused on LegalZoom's preparation services, which offered consumers a legal service in which human employees play a large role, rather than a piece of self-help merchandise.<sup>43</sup> The court explicitly stated that the internet medium the service is delivered through was not the problem.<sup>44</sup> Rather, the problem was the LegalZoom employees who intervene at numerous stages in the process. Employees reviewed the data file for completeness, spelling and grammatical errors, and factual consistency.<sup>45</sup> If the employees spotted an error, they contacted the customer, who could choose to correct the answer.<sup>46</sup> Employees then did a final review of the document for quality and formatting before printing and shipping the unsigned document to the customer.<sup>47</sup> Individuals were no longer filling out documents by themselves with simple directions but were instead rendered passive bystanders in the process.<sup>48</sup> Finally, LegalZoom provided customer service by email and telephone for any issues that could arise while using their services.<sup>49</sup> The court reasoned that there is a risk of the public being served in legal matters by "incompetent or unreliable persons" due to the significant role employees—who are not authorized to practice law—play in the preparation of documents.<sup>50</sup>

The district court also focused on LegalZoom's branching computer software, that generated a series of questions for the client to answer and provided further questions based on these responses, then producing a final document based on the answers to these questions.<sup>51</sup> The court stated that there was little difference between the branching software and a lawyer "asking a client a series of questions and then [selecting and] preparing a legal document based on the answers provided and the applicable...law."<sup>52</sup> The opinion clarified that although a lawyer's services often extends far beyond merely filling out forms, this does not change the fact that document preparation is also a means of practicing law.<sup>53</sup>

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42. *Id.* at 1063.

43. *Id.* at 1064.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 1065.

49. *Id.* at 1064.

50. *Id.* at 1059.

51. *Id.* at 1065.

52. *Id.*

53. *Id.*

Although the Western District of Missouri's decision is not binding on Washington state, it is an applicable case that may predict how a Washington court may decide the issue, especially because the two states have similar unauthorized practice of law statutory language.<sup>54</sup> Additionally, LegalZoom and other ILSPs currently operate in Washington, which means they are definitively serving consumers identical to the broadly defined class in *Janson*. As long as Washington defines the "practice of law" so broadly, ILSPs will continue to be at risk of criminal prosecution.

## II. ILSPs ARE ESSENTIAL TO HELPING THE MOST VULNERABLE MEMBERS OF SOCIETY

ILSP innovations reduce costs and increase both accessibility and efficiency for low and middle-income consumers who lack access to the legal system and "have a vast array of basic, often urgent, legal needs."<sup>55</sup> This is especially true for victims in abusive marriages or partnerships who may find it difficult to seek legal help regarding divorce, separation, child custody and support, or other legal issues out of fear of physical, sexual, emotional, or financial consequences.<sup>56</sup> These vulnerable individuals have an immense need for a quick, covert, and more affordable legal process, which may not be available through the traditional attorney.

The National Network to End Domestic Violence describes financial abuse as "a common tactic used by abusers to gain power and control in a relationship."<sup>57</sup> The forms of financial abuse may vary but "include tactics to conceal information, limit the victim's access to assets, or reduce accessibility to family finances."<sup>58</sup> Financial abuse may be present throughout the duration of a relationship, or it may begin when a victim "is attempting to leave or has left the relationship."<sup>59</sup> Financial abuse is so effective at controlling victims that many describe it as the main reason that they stayed in an abusive relationship or went back to one.<sup>60</sup> The average cost of a divorce in the U.S. is roughly \$15,000 per person, if you include attorney's fees, court fees, and the expense of retaining outside

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54. Compare WASH. COURT GEN. R. 24, with MO SUP. CT. R. 4-5.5.

55. Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955, 957 (2019).

56. See generally *Forms of Abuse*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (2017), <https://nnedv.org/content/forms-of-abuse/> [https://perma.cc/Z9NR-PV89].

57. *About Financial Abuse*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (2017), <https://nnedv.org/content/about-financial-abuse/> [https://perma.cc/K5SK-XKBT].

58. *Id.*

59. *Id.*

60. *Id.*



experts such as a child custody evaluator.<sup>61</sup> When a family law attorney charges roughly \$250 an hour for their services,<sup>62</sup> victims of financial abuse do not have the option to seek out an attorney for help filing for divorce, addressing child custody or support issues, or even seeking a protection order. These victims are left essentially powerless and unable to use the legal system unless another avenue is available.

The lower costs of ILSPs mitigate the financial barrier many victims of domestic violence face in breaking the cycle of abuse once and for all.<sup>63</sup> Instead of paying steep hourly rates to address family law issues, victims are charged lower service and filing fees. The justice of the family court system thus becomes accessible to all individuals, instead of primarily to those with independent and expendable financial resources.

The lives of victims of physical abuse may also depend on ILSP assistance. Physical abuse is a potent method of keeping an intimate partner under control, “and it instills an environment of constant fear.”<sup>64</sup> Physical abuse often escalates over time, especially when the victim plans to leave.<sup>65</sup> A female victim’s risk of getting killed greatly increases when they are in the process of leaving an abusive relationship or have just left,<sup>66</sup> and victims often endure life-threatening assaults once they leave.<sup>67</sup> On average, three women die at the hands of a current or former intimate partner every day.<sup>68</sup>

Roia, the woman in the introduction who was brutally assaulted by her husband, displays how it is common for abusive partners to track a victim’s every movement.<sup>69</sup> A victim in Roia’s position could not discuss her issues with a hospital social worker without fearing for her life—attending even just one consultation with an attorney could be deadly.

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61. *How Much Does a Divorce Cost?*, THUMBTACK (Sept. 19, 2018), <https://www.thumbtack.com/p/divorce-cost> [<https://perma.cc/3AFC-LR8C>].

62. Samuel K. Darling, *How Much Does a Divorce Cost in Washington State?*, GENESIS L. FIRM, <https://www.genesislawfirm.com/divorce-cost-washington-state> [<https://perma.cc/LB7K-WQEV>].

63. See, e.g., *Divorce Pricing*, LEGALATOMS, <https://legalatoms.com/pricing/> [<https://perma.cc/Z5U3-TQLG>] (listing an amicable divorce package as starting around \$250 and a contested divorce as starting around \$900); *Free Application for Domestic Violence Protection*, LEGALATOMS, <https://legalatoms.com/domestic-violence/> [<https://perma.cc/TGB4-C75C>] (offering free preparation of court documents for Domestic Violence Protection Order).

64. *Forms of Abuse*, *supra* note 56.

65. *Id.*

66. See RONE BACHMAN & LINDA E. SALTZMAN, U.S. BUREAU OF JUST. STAT., VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY (1995), <https://www.bjs.gov/content/pub/pdf/FEMVIED.PDF> [<https://perma.cc/C9HU-CHRE>].

67. See, e.g., Samantha Ives, *My Domestic Violence Survivor Story*, BREAKING THE SILENCE AGAINST DOMESTIC VIOLENCE (Dec. 7, 2017), <https://breakthesilencedv.org/domestic-violence-survivor-story/> [<https://perma.cc/GJ7N-35CQ>]; see also Davey, *supra* note 1.

68. See JAMES ALAN FOX & MARIANNE W. ZAWITZ, U.S. BUREAU OF JUST. STAT., HOMICIDE TRENDS IN THE U.S., 90 (2008).

69. See Davey, *supra* note 1.

These victims, fearful for their safety and the safety of their children, may depend on the covert nature of ILSPs which enable them to do legal research and file necessary documents, such as a domestic violence protective order, from any Internet capable device.<sup>70</sup>

ILSPs are an inconspicuous mechanism of seeking legal advice compared with leaving one's home, at the risk of being followed, to meet with an attorney. Even discussing legal matters on a phone may be risky when an abuser tracks the incoming or outgoing calls—an easy task to accomplish when the abuser often has access to the wireless phone carrier's account.<sup>71</sup> While abusers often also track a victim's Internet use, Internet history is much easier to conceal than one's physical location or monitored phone calls. For example, the National Network to End Domestic Violence has an entire website dedicated to equipping survivors with basic knowledge of how to conceal their Internet presence.<sup>72</sup> A victim can utilize an ILSP's services and completely hide any trace of it by opting for "private browsing" mode, opting out of third-party tracking, or simply deleting browser history.<sup>73</sup> With the low-profile legal aid ILSPs may provide, victims can obtain the assistance they desperately need before an abuser makes the situation so deadly that law enforcement or social services need to get involved; victims like Roia should not have to risk death before they are able to seek legal help.

Although ILSPs can certainly help domestic violence victims with family law-related issues, female victims of intimate-partner violence are more likely to experience other significant legal issues, such as issues with housing and potentially employment.<sup>74</sup> Sixty-one percent of low-income individuals who receive limited legal advice or assistance are able to solve some portion of their legal problem.<sup>75</sup> Of this group that receives legal advice or assistance, "nearly 30% [are] able to resolve their legal problems completely."<sup>76</sup> These victims can tremendously improve their lives if they have access to affordable, remote, and quick legal assistance. Instead of

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70. See *Free Application for Domestic Violence Protection*, *supra* note 63.

71. See *Technology Safety – Cell Phone & Location Safety Strategies*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (2018), <https://www.techsafety.org/resources-survivors/cell-phone-safety-plan> [<https://perma.cc/SU5W-UMUZ>].

72. *Technology Safety – Internet Browser Privacy Tips: In-Browser Settings*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (2015), <https://www.techsafety.org/Internetbrowserprivacytips> [<https://perma.cc/9LE5-STBZ>].

73. See *id.*

74. See M.J. BREIDING, J. CHEN & M.C. BLACK, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES — 2010, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CNTRS. FOR DISEASE CONTROL AND PREVENTION 2 (2014), [https://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_ipv\\_report\\_2013\\_v17\\_single\\_a.pdf](https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf). [<https://perma.cc/5QP6-GY5N>].

75. See CIVIL LEGAL NEED STUDY, *supra* note 78, at 16.

76. *Id.*

focusing on the stress of abuse or the legal constraints that accompany such abuse, these individuals can reenter society and rebuild themselves and their families.

### III. ILSPs HAVE THE ABILITY TO MAKE ATTORNEYS MORE EFFICIENT

As there is an established need for greater access to legal aid for domestic violence victims and other disadvantaged groups, the legal community should be more receptive of ILSPs. Attorneys may reap benefits by adopting new modes of technology.

As technology has progressed and given most professions the ability to work with increased speed and efficiency, the legal profession has yet to fully utilize technological advancements.<sup>77</sup> Advancements in technology have also given clients the expectation that lawyers will provide services more quickly and economically.<sup>78</sup> However, clients continue to complain about the cost of attorney services, as well as the slower pace of traditional legal work.<sup>79</sup> For this reason, many legal clients, especially big businesses, have begun rejecting the notion that the work product of lawyers is the only means of answering legal questions.<sup>80</sup> Consumers have increasingly looked to services that combine the efficiency of technology with the expertise of attorneys and provide answers to their problems more quickly.<sup>81</sup> Additionally, many consumers now complete all their life tasks on some Internet medium—banking,<sup>82</sup> shopping,<sup>83</sup> education,<sup>84</sup> investing,<sup>85</sup> and more are all available on a device

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77. See, e.g., Paul M. Horn, *The Changing Nature of Innovation*, 48 RSCH. TECH. MGMT. 28 (2005); Rob Law, Daniel Leung, Norman Au & Hee “Andy” Lee, *Progress and Development of Information Technology in the Hospitality Industry: Evidence from Cornell Hospitality Quarterly*, 54 CORNELL HOSP. Q. 10, 10 (2012); J.A. Powell, M. Darvell, & J.A.M. Gray, *The Doctor, The Patient and the World-Wide Web: How the Internet is Changing Healthcare*, 96 J. ROYAL SOC’Y MED. 74, 75 (2003).

78. See VIRGINIA BAR ASSOCIATION, *The Study Committee on the Future of Law Practice* 1, 1 (2014).

79. See Mark A. Cohen, *Legal Delivery at the Speed of Business—And Why It Matters*, FORBES (June 25, 2018), <https://www.forbes.com/sites/markcohen1/2018/06/25/legal-delivery-at-the-speed-of-business-and-why-it-matters/#1afb39a75e53> [https://perma.cc/25CG-UX96].

80. *Id.*

81. *Id.*

82. See, e.g., Lissa Poirot, *7 Best Mobile Banking Apps*, INVESTOR JUNKIE (Apr. 25, 2021), <https://investorjunkie.com/banking/best-mobile-banking-apps/> [https://perma.cc/67Z7-UNB2].

83. See, e.g., Marina Liao, *Amazing Shopping Apps You Won’t Believe You’ve Lived Without*, MARIE CLAIRE (Oct. 20, 2020), <https://www.marieclaire.com/fashion/g2408/best-shopping-apps/> [https://perma.cc/QG33-7VTB].

84. See, e.g., Saroj Kumar, *10 Top Educational Apps for Kids*, ELEARNING INDUSTRY (May 4, 2018), <https://elearningindustry.com/10-top-educational-apps-for-kids> [https://perma.cc/MYS5-YU8Y].

85. See, e.g., *About Us*, ROBINHOOD, <https://robinhood.com/us/en/about-us/> [https://perma.cc/DR5D-BCTP].

in one's pocket—so it is logical that those consumers also seek legal advice in a similar fashion. In a new digital age, clients tend to prefer digital communication as opposed to telephone or in-person interactions.<sup>86</sup> Clients also prefer the accessibility and speed of Internet services.<sup>87</sup> Even the American judicial process, which has long had a negative public image of being out-of-date, backlogged, and slow,<sup>88</sup> has seen the convenience and value of online services and has adopted new technology to create online dispute resolution services, virtual courtrooms, and other Internet-based services.<sup>89</sup> The need for legal matters to be conducted virtually and remotely has only continued to grow in a world affected by the COVID-19 pandemic.

The legal profession has already adopted certain types of technology to increase the speed of traditional discovery practices, billing, and research. It is therefore unclear why the legal community has been resistant to accept ILSPs into its practice. As globalization begins to blur geographical boundaries, businesses and clients may operate across many states and nations.<sup>90</sup> Large, global clients require technological innovations to ensure their legal issues are addressed and delivered quickly.<sup>91</sup> For example, ILSPs can aid in a smooth transition from referral to hiring an attorney. Many ILSPs recommend clients with more complex legal issues to local attorneys, who often provide flat-rate packages for their services.<sup>92</sup> When clients first seek legal help, they are often unaware of exactly what type of help they need and have a tendency to focus on irrelevant parts of their problem when meeting with an attorney.<sup>93</sup> Attorneys must spend valuable time conducting thorough intake interviews, after which they may still be confused as to what the client wants or needs. If a client has already completed a questionnaire through

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86. Richard S. Granat, *Really Virtual: Putting A Practice Online Means Access, Efficiency and Upkeep*, ABA J. (Mar. 1, 2017), [http://www.abajournal.com/magazine/article/how\\_to\\_start\\_virtual\\_law\\_practice](http://www.abajournal.com/magazine/article/how_to_start_virtual_law_practice) [https://perma.cc/5AHM-V4YC].

87. *Id.*

88. Studies have shown that the public perceives the American court system to be too slow and too costly. *See, e.g.*, DAVID B. ROTTMAN & RANDALL M. HANSEN, NAT'L CTR. FOR STATE CTS., HOW RECENT COURT USERS VIEW THE STATE COURTS: PERCEPTIONS OF WHITES, AFRICAN-AMERICANS, AND LATINOS 1 (2001).

89. *See* Cohen, *supra* note 79.

90. *See* Mike Myatt, *The Impact of Globalization on Business*, N2GROWTH, <https://www.n2growth.com/the-impact-of-globalization-on-business/> [https://perma.cc/M3G3-85ZB].

91. *See* Cohen, *supra* note 79.

92. *See, e.g.*, *Attorney Advice*, LEGALZOOM, <https://www.legalzoom.com/attorneys/> [https://perma.cc/HZ48-NBXR]; *Ask a Lawyer*, ROCKET LAWYER, <https://www.rocketlawyer.com/legal-advice.r/#/> [https://perma.cc/P43R-RQWE].

93. *See, e.g.*, LYN COBIN GULLETTE & WILLIAM R. GULLETTE, DIFFICULT CLIENTS—DEDICATED ATTORNEYS: PRACTICAL PSYCHOLOGY FOR EFFECTIVE IN-THE-TRENCHES REPRESENTATION 13–15 (2005).

an ILSP, they can come to their referred attorney already equipped with a diagnosed problem. The attorney then has more time to spend on completing the tasks that actually require legal judgment and reasoning.

Small firms, who may feel that their business is threatened by the growth of ILSPs, can benefit from partnering with these providers to establish a practice and generate clients. Solo and small practitioners spend much of their precious time seeking clients<sup>94</sup> (attorney billboard or bus bench advertisements are notoriously ubiquitous), and ILSPs have the ability to streamline this process. As mentioned above, ILSPs are associated with attorneys nationwide in various practice areas, to whom they refer clients to when basic document selection tasks are not enough to solve the clients' problems.<sup>95</sup> These referral services can help smaller firms and independent practitioners focus more on the legal aspects of their practice, rather than searching for their next client. Furthermore, clients may feel that an attorney's service is absolutely essential once they have exhausted every do-it-yourself alternative and may be more content to pay for traditional legal assistance as a result. If attorneys wish to stay relevant and profitable in this new technological landscape, they must be willing to fully embrace novel technology tools. Instead of fearing that ILSPs will take away business, small practitioners should take advantage of this new opportunity to market themselves.

Detractors may argue that utilizing an ILSP's referral services may affect an attorney's independent ability to dictate strategic legal choices or fee agreements. However, this argument fails to account for how referral services work. Pursuant to the ABA Model Rules of Professional Conduct, a lawyer may partner with a service to receive client referrals, so long as the lawyer remains completely independent and does not allow any person or entity who recommends the lawyer "to direct or regulate the lawyer's professional judgment in rendering such legal services."<sup>96</sup> Similarly, the attorney would be free to set their own fee agreements<sup>97</sup> because the attorney's services are completely independent of the ILSP's services.<sup>98</sup> Therefore, as long as attorneys adhere to the Rules of Professional Conduct, there is no legitimacy in any claim that utilizing an ILSP referral

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94. See BARTON & RHODE, *supra* note 55, at 962–63.

95. See *supra* note 92.

96. MODEL RULES OF PROF'L CONDUCT r. 5.4(C) (AM. BAR ASS'N 1983).

97. Traditional market principles obviously apply to fee setting in this environment, just as they do in the usual legal economy. If a referred client reaches out to several attorneys recommended by an ILSP, the one with the best price may win.

98. The ABA bars partnering with a nonlawyer or sharing fees with a nonlawyer. See MODEL RULES OF PROF'L CONDUCT r. 5.4 (AM. BAR ASS'N 1983).

service would somehow dictate the attorney's choices or fee-setting power.

#### IV. ADDRESSING ARGUMENTS AGAINST ILSPs & IN FAVOR OF TIGHT UPL RESTRICTIONS

Proponents of strict unauthorized practice of law (UPL) regulations and limited ILSP operation contend that one of the main purposes of having such harsh statutes is to protect the average citizen, unaware of how to navigate the complex legal system, from groups that wish to take advantage of them. In contrast to the unregulated nature of ILSPs, the legal profession has established a number of regulating bodies, rules, and practices to combat these risks. Attorneys are held accountable by state bar associations, which investigate claims of malpractice or ethics violations.<sup>99</sup> Additionally, the Washington State Bar has an established Client Protection Board for the purpose of relieving or mitigating losses sustained by a client due to the dishonesty of any member of the Washington State Bar Association.<sup>100</sup>

Many detractors believe that automated systems, such as those present in ILSPs, pose a danger of providing defective or incomplete legal assistance.<sup>101</sup> Marc Lauritsen points out that incorrect or "incomplete legal assistance can cause significant damage," including loss of time, money, or entire legal remedies, "and it is reasonable to assume such damage is more likely when no lawyer is involved."<sup>102</sup> Additionally, consumers may face harm if they obtain "one-size-fits-all documents based on inaccurate or out-of-date forms not in compliance" with the relevant state law.<sup>103</sup> Legal problems are complex and even the best software may not match the nuances attorneys must decipher when dealing with a client's issue. For example, a client's choice of words, body language, and overall demeanor may help an attorney determine exactly what they need and want. Attorneys may use these unspoken communications in detecting underlying problems the client may have without the client directly telling them.<sup>104</sup> Furthermore, lawyers have the ability to create a feeling of

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99. See, e.g., *Concerns About a Lawyer*, WASH. STATE BAR ASS'N (Aug. 14, 2020), <https://www.wsba.org/for-the-public/concerns-about-a-lawyer> [ <https://perma.cc/6WU4-44W2>].

100. *Client Protection Board*, WASH. STATE BAR ASS'N (Mar. 26, 2019), <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/client-protection-fund#39;-fund-for-client-protection> [ <https://perma.cc/P2VA-5JVB>].

101. See Jonathan Sparks, *Why You Should Never Use LegalZoom or Use DIY Online Documents*, SPARKS LAW, <https://sparkslawpractice.com/blog/why-you-should-never-use-legal-zoom-or-use-diy-online-documents/> [ <https://perma.cc/F2T9-5JCW>].

102. Marc Lauritsen, *Are We Free to Code the Law?*, 56 COMM'NS ACM 60, 63 (2013).

103. Lisa H. Nicholson, *Access to Justice Requires Access to Attorneys: Restrictions on the Practice of Law Serve a Societal Purpose*, 82 FORDHAM L. REV. 2761, 2780 (2014).

104. See Lauritsen, *supra* note 102.

expertise which may be essential in gaining the client's trust throughout the process.<sup>105</sup>

As of now, ILSPs are not regulated in a manner that ensures compliance with local laws, ethics, and providing their clients with the best possible service. ILSPs are not part of any specialized regulatory agency, like a state bar, which can hold them accountable for negligent or fraudulent behavior. Additionally, there is no fund to reimburse injured consumers with additional legal consequences as a result of unsound advice. Scammers may attempt to prey on consumers, especially disadvantaged individuals, who are facing stressful legal issues with the promise to help them at a reduced rate. Without regulation, consumers have no avenue for reporting malpractice or unethical behavior, or for recovering from any losses sustained from this behavior.<sup>106</sup> Even worse, clients who suffer such grievances may find it difficult to bring suit against ILSPs, which often provide a laundry list of terms and conditions that may bind the aggrieved client to private arbitration proceedings instead of a public court proceeding.<sup>107</sup> Additionally, legal service consumers are unlikely to have experience or knowledge about the legal system to enable them to assess the quality of the legal services received.<sup>108</sup> Furthermore, it is unlikely that an aggrieved client would retain an attorney to proceed against a legal service provider when, "for economic reasons, they failed to consult an attorney regarding their initial legal problem."<sup>109</sup> Most aggrieved consumers generally level their complaints through "nontraditional channels" like social media or by directly complaining through phone calls and letters to the providers themselves.<sup>110</sup>

The unregulated nature of ILSPs certainly poses a tremendous risk to consumers; however, they should not be discounted solely on this basis. Indeed, the benefits ILSPs provide to low-income, vulnerable groups, especially domestic violence victims, should give the legal profession an incentive to formulate some sort of regulation so consumers can fully reap their advantages.<sup>111</sup> One way to ensure that ILSPs are held accountable for their actions would be the implementation of a board within state bar associations which would be tasked with monitoring ILSP activity and fielding any consumer complaints.

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105. *See id.*

106. *See* Benjamin H. Barton, *Some Early Thoughts on Liability Standards for Online Providers of Legal Services*, 44 HOFSTRA L. REV. 541, 559 (2015).

107. *Id.*

108. Nicholson, *supra* note 103, at 2781.

109. *Id.*

110. *Id.*

111. *See supra* Part II.

This would not be a difficult regulation. In 2012, Washington became the first state in the country to allow non-lawyers, called limited license legal technicians (LLLTs), to commercially engage in some practices of law. LLLTs are licensed by the Washington Supreme Court “to advise and assist people going through divorce, child custody, and other family law matters in Washington.”<sup>112</sup> One of an LLLT’s main tasks is to complete and file necessary court documents, similar to the services provided by ILSPs.<sup>113</sup> These technicians cannot represent clients in court or negotiate on a client’s behalf.<sup>114</sup> Unlike paralegals, Washington State Bar Association (WSBA) LLLTs are independent and function without a supervising lawyer.<sup>115</sup>

It would not be difficult to regulate ILSPs through licenses similar to those of limited license legal technicians—these entities are not lawyers, yet they seek to help clients with basic legal issues by selecting and preparing documents. For those who may argue that ILSPs are not needed where legal technicians exist, as of 2017 there were only twenty-six licensed LLLTs in Washington, most of them located in the Seattle-Tacoma area—leaving some of the lower-income areas of Washington without a less expensive alternative to an attorney.<sup>116</sup> Also, many barriers exist for those who wish to become LLLTs, such as expensive programs ineligible for student aid and a requirement that individuals obtain at least 3,000 hours of practical experience prior to being certified.<sup>117</sup>

Former WSBA President Patrick Palace even addressed concerns that limited license legal technicians would take away business from small firms and independent practitioners:

A popular concern among small and solo practitioners is that the LLLT would directly compete and take away business. However, that was never likely to happen and has not happened because the citizens that are using LLLTs cannot afford a lawyer and would not hire a lawyer. Therefore, practicing lawyers are not losing clients to LLLTs. Instead the latent market or those in the justice gap are simply provided access.<sup>118</sup>

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112. See *Limited License Legal Technicians*, WASH. STATE BAR ASS’N (Jan. 14, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians> [https://perma.cc/ET96-P9CB].

113. *Id.*

114. Mary Juetten, *The Limited License Legal Technician is the Way of the Future of Law*, ABA J. (Dec. 8, 2017), [https://www.abajournal.com/news/article/the\\_limited\\_license\\_legal\\_technician\\_story\\_start\\_with\\_why](https://www.abajournal.com/news/article/the_limited_license_legal_technician_story_start_with_why) [https://perma.cc/E73K-RMA6].

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*



Similar reasoning applies to ILSPs: those who utilize these basic services are not likely to go to a traditional attorney in the first place.<sup>119</sup> Additionally, as discussed above, ILSPs are more likely to facilitate business for smaller or solo practitioners than legal technicians by directly referring clients with complex needs to partnered attorneys.<sup>120</sup> Most importantly, the Washington Supreme Court decided to sunset the LLLT program last summer due to the “overall costs of sustaining the program and the small number of interested individuals.”<sup>121</sup> The court concluded that the LLLT program was not an effective way to meet its initial purpose of increasing access to legal services.<sup>122</sup> The sunseting of the LLLT program proves that a simpler alternative is indispensable for clients in need of more affordable legal services—and ILSPs are equipped to provide the affordable legal access that vulnerable Washingtonians so desperately need.

An easier fix to the potential problem of consumers who overly rely on ILSP advice could be demanding that all ILSPs include disclaimers, easily viewable from their webpage interface, that remind consumers that the provider is neither an attorney nor provides services that substitute for those of an attorney.<sup>123</sup> Consumers may be less likely to be taken advantage of, and less likely to overly depend on ILSP advice, if they are made fully aware that any legal assistance they receive is not from a true legal professional.

Washington can also look to other states with more relaxed unauthorized practice of law statutes, which would not aggressively implicate ILSPs. For example, New Jersey’s Advisory Committee on Professional Ethics has permitted nonlawyers to be involved in preparing certain types of legal documents.<sup>124</sup> The Committee found that the public will not be harmed in any severe way if the state allows nonlawyers to help

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119. Andrew M. Perlman, *Toward a Unified Theory of Professional Regulation*, 55 FLA. L. REV. 977, 1029–30 (2003) (“A substantial number of people cannot afford to hire lawyers and, if faced with the choice between representing themselves and getting an attorney (the choice they face with strict UPLs), these people will represent themselves or, in a proceeding they want to initiate, fail to initiate it. The choice, therefore, is not between a lawyer and a non-lawyer; it is between a non-lawyer assistant and no assistance at all.”).

120. See *Attorney Advice*, LEGALZOOM, <https://www.legalzoom.com/attorneys/> [<https://perma.cc/HZ48-NBXR>]; *Ask a Lawyer*, ROCKET LAWYER, <https://www.rocketlawyer.com/legal-advice.r/#/> [<https://perma.cc/2LBM-APBX>].

121. Letter from Debra L. Stephens, Chief Justice, Wash. Sup. Ct., to Ltd. License Legal Technician Bd. and Wash. State Bar Ass’n (June 5, 2020) [hereinafter Supreme Court Letter].

122. *Id.*

123. See, e.g., *LegalZoom Disclaimer*, LEGALZOOM, <https://www.legalzoom.com/disclaimer.html> [<https://perma.cc/A3XM-TXMD>].

124. See New Jersey Advisory Comm. on Pro. Ethics, *Accountants: Drafting Corporate Documents—Modifying Opinion 2*, 204 N.J.L.J. 851 (2011).

prepare fill-in-the-blank forms.<sup>125</sup> Furthermore, the existence of state and federal court-sponsored websites and programs—which provide interactive legal forms to assist low-income individuals—shows that automated services are a step towards greater access to justice, and any harm they may pose is relatively minimal.<sup>126</sup>

One such program, A2J Author, was the result of research by the Access to Justice, Meeting the Needs of Self-Represented Litigants: A Consumer Based Approach Project (the Project).<sup>127</sup> The Project identified some of the major, nationwide barriers self-represented litigants faced in access to justice.<sup>128</sup> One of the crucial insights discovered through the Project's research was "that the simple act of filling out forms raises unique challenges that many low income self-represented litigants have trouble overcoming."<sup>129</sup> The Project's discoveries led to the installation of the Illinois Joint Simplified Dissolution of Marriage Prototype (JSDM Prototype).<sup>130</sup> This prototype was a custom program, supported by the state of Illinois, which provided an online interface for "pro se litigants to complete forms required for a joint simplified dissolution of marriage."<sup>131</sup> After the JSDM Prototype proved to be successful, Chicago-Kent College of Law's Center for Access to Justice and Technology joined the Center for Computer-Assisted Legal Instruction (CALI) to create A2J Author—a "software machine" that could generate many online interfaces for various states and judicial departments to provide interactive court forms for pro se litigants.<sup>132</sup>

The recognized success of A2J Author by courts and practitioners nationwide lends support to the idea that branching software—highly utilized by ILSPs—is effective in providing limited assistance to indigent litigants. It is unlikely that courts would sponsor such programs if there was any doubt regarding the efficacy of the legal assistance provided, or if there were any concerns about these programs causing undue harm to vulnerable consumers.

Although the harm of incomplete or inaccurate legal advice is certainly an issue of concern, it is not an issue that cannot be easily fixed. If state bars are concerned with ensuring the public receives thorough and

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125. *Id.*

126. See Barton & Rhode, *supra* note 55, at 4. See generally *Welcome to A2J Author*, A2J AUTHOR, <https://a2jauthor.org> [<https://perma.cc/V24E-F8RZ>].

127. *History of A2J Author*, A2J AUTHOR, <https://a2jauthor.org/content/history-a2j-author> [<https://perma.cc/MUC2-F4LV>].

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

competent legal advice, they should focus on creating committees or licenses devoted to regulating service providers who can bridge the massive access to justice issue our country faces, rather than ensuring that disadvantaged groups receive no help at all.

#### CONCLUSION

For too long, our legal system has been inaccessible to the most marginalized and poverty-stricken groups within our country. Research conducted by our own Washington Supreme Court indicates that these afflicted groups, and especially domestic violence victims, are disproportionately imperiled by severe legal issues affecting the most fundamental aspects of their daily lives.<sup>133</sup> The traditional attorney route has been, and continues to be, out of reach for individuals with limited resources, leaving them to face life-altering legal decisions without aid. It is time our communities fully embrace strategies and innovation which strive to give these individuals access to even limited help. As the internet increasingly provides us with more efficient methods of completing life tasks, it is only natural that these modernizations be extended to the legal realm, where they can provide economically disadvantaged groups with the help they have deserved for many years. Specifically, victims of domestic violence deserve a cheap and safe method of obtaining legal relief from their abusers and from the stress and consequences that merely being a victim of abuse places upon them.

The legal community as a whole should embrace the technological revolution which has swept every other industry on this planet. Not only do clients expect lawyers to adapt to a fast-paced, technology-based world, but lawyers can profit from incorporating these tools into their practice. Finally, while there may be valid, good-faith reasons for protecting consumers from unregulated ILSPs, there needs to be discussion about what kind of regulations would be necessary to protect vulnerable consumers while also allowing them to access more affordable and convenient legal assistance alternatives. Certain states and court systems have already found success in loosening unauthorized practice of law restrictions to increase access to justice for pro se litigants,<sup>134</sup> and it is time Washington follows suit—especially after the LLLT program was found to be insufficient.<sup>135</sup>

Victims like Roia Atmar do not always survive their attackers. Statistics show that “[n]early half of the women who were murdered

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133. See WASH. STATE SUP. CT., *supra* note 8.

134. See Barton & Rhode, *supra* note 55, at 4960–61. See generally A2J AUTHOR, *supra* note 126.

135. See Supreme Court Letter, *supra* note 121.

during the past decade were . . . killed by a current or former intimate partner.”<sup>136</sup> Some victims will never get the second chance at survival that Roia did, where police could intervene and guide her through legal processes to ensure her survival.<sup>137</sup> Most victims depend on Google searches, pleading for guidance on quick, cheap divorces or protection orders as they look over their shoulders in fear. As a community, we have a duty to ensure that these victims have suitable access to the legal system before it is too late.

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136. Katie Zezima, Deanna Paul, Steven Rich, Julie Tate & Jennifer Jenkins, *Domestic Slayings: Brutal & Foreseeable*, WASH. POST (Dec. 9, 2018), <https://www.washingtonpost.com/graphics/2018/investigations/domestic-violence-murders/> [<https://perma.cc/9CT2-WG95>].

137. See Davey, *supra* note 1.