

PRELIMINARY REPORT AND PRELIMINARY
RECOMMENDATIONS ON THE UNMET
NEEDS OF MODERATE INCOME PERSONS
IN MARYLAND

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PRELIMINARY REPORT AND PRELIMINARY RECOMMENDATIONS ON THE
UNMET LEGAL NEEDS OF MODERATE INCOME PERSONS IN MARYLAND

TO: THE FOUR PARTNERS OF THE MODERATE INCOME ACCESS TO
JUSTICE PROJECT STEERING COMMITTEE: THE MARYLAND STATE BAR
ASSOCIATION, THE MARYLAND INSTITUTE FOR CONTINUING
PROFESSIONAL EDUCATION OF LAWYERS, AND THE UNIVERSITY OF
BALTIMORE AND MARYLAND SCHOOLS OF LAW

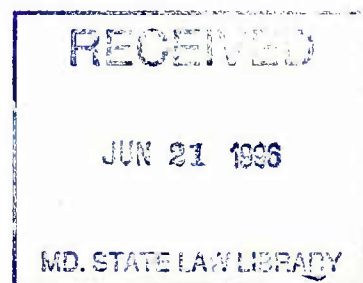
FROM: THE MARYLAND MODERATE INCOME ACCESS TO JUSTICE TASKFORCE

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June 11, 1996

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I. EXECUTIVE SUMMARY

In this report we analyze a serious public problem: the inability of many of the members of the 750,000 or so moderate income households in Maryland to enforce the rule of law. We rely upon our adversary system to resolve the many legal disputes that arise in our highly regulated society. The core assumption, however, that Maryland litigants have equal access to the legal representation that often is essential to balance the adversary process, is simply not true for many moderate income people.

We propose a variety of ways in which all the actors in the civil justice system - Maryland's legal profession, judiciary, legislature, executive branch and corporate community - might respond to this access to justice problem. We propose a leadership role for the Maryland legal profession. We cannot ask others to do more unless we do more ourselves. The profession, acting through the State's bar association, continuing legal education program and our two law schools, has demonstrated its collective commitment to action by identifying the moderate-income access to justice problem, commissioning qualitative and quantitative studies to measure it and appointing our Taskforce.

This report is preliminary. Before we finally decide what recommendations to make, we intend to talk further to many of the people who now are laboring to make justice a reality for moderate-income persons; for example, those who participate in local lawyer referral programs, reduced fee lawyer panels, legal information hotlines, courthouse-based legal information services, innovative educational courses, prepaid and group legal services plans, bar association committees, and other innovative private and public sector access to justice initiatives. We intend to support, work with and build on these efforts, not supplant or compete with them. The first

step in this collaborative process is to listen carefully to the additional information and views of others.

We will distribute this preliminary report as widely as we can. We encourage any interested person to submit written comments to the Chairman of the Taskforce by July 15th. We intend to hold a public hearing (or hearings) on our report in early fall to supplement the written comments that we receive. Thereafter, we will produce a final report.

In sum, these are our preliminary proposals:

- Legal Education. We ask our three educational partners to review and revise their curricula to better accomplish the access to justice goal. Law students and lawyers can better serve moderate income persons if they know more about both the substantive law practice areas in which there is substantial unmet legal need and creative and efficient ways in which they can meet that need.

- Justice Resource Center. We propose that the four partners create a Justice Resource Center, or a local network of resource centers, to coordinate and focus their justice reform efforts. (For simplicity, we refer to this center or these centers as the "Resource Center".) Center staff and volunteer attorneys would establish a statewide legal hotline for moderate income people who wish to determine if they have legal problems and, if so, how they might best resolve them. The Center would provide legal information to interested persons in libraries, municipal buildings, schools, social services centers and community centers, among other decentralized sites. The first step in protecting legal rights is identifying them. The Center would help people of moderate income to do this.

We understand that that the project partners do not now have sufficient resources to

create the proposed Resource Center. We stand ready to work with them both to generate new resources and to identify existing resources that might be dedicated to this function.

In proposing the Resource Center, we expressly acknowledge that the project partners have different roles to play in assuring that moderate income persons have effective access to justice. The Resource Center can be a means by which they make their distinctive contributions to justice.

- *Courthouse Legal Information Centers and the Expanded Use of Mediation and Conciliation.* The Resource Center would work with the judiciary to establish comprehensive legal information centers in courthouses, to develop simplified "user friendly" legal forms and to expand the use of mediation and conciliation to resolve disputes. We offer these last two proposals as partial remedies for the unnecessary complexities and adversarial excesses that produce public frustration and dissatisfaction. Many people who do not have a lawyer look for legal information in courthouses. They should be able to find it there.

- *Prevention.* The Resource Center should also develop a model and replicable program of prevention - the equivalent of an annual, low-cost legal check-up - that will reduce the need for more expensive litigation services.

- *Prepaid, group and limited representation plans.* We propose a statewide summit conference on prepaid legal plans (a form of legal insurance), group legal plans (which entitle members to legal assistance at a reduced fee) and discreet task representation (a form of limited legal representation in which the lawyer and client share responsibility for the work necessary to resolve legal problems). We will use what we learn at this conference to formulate proposed revisions of laws and rules that make responsible versions of these consumer options more

available to moderate income persons.

- Statewide legal information database and small firm laboratory. A root cause of the access to justice problem is economic, both for would-be clients and lawyers. To reduce legal costs, and thereby increase the capacity of consumers to obtain legal services, we recommend that the Justice Resource Center establish a statewide legal information computer database for lawyers who wish to represent moderate income clients in areas of unmet legal need; consult with these attorneys; and help develop an experimental solo or small firm law office, in the nature of a laboratory, to test and evaluate new approaches to providing legal help to people of moderate income in areas of unmet legal need.

- Eliminating Arbitrary governmental Barriers to Justice. We recommend that the Attorney General empanel an intergovernmental access to justice commission, with representation from our Taskforce. We hope the commission would identify government access to justice barriers, develop reforms and implement them. The commission's goal would be to help our citizens better identify, understand, comply with and enforce often complex bodies of law.

- The Enhanced Role of the Corporate and Business Community. Maryland's business and labor leaders should be invited to the proposed statewide summit conference on prepaid and legal services plans. We encourage them to propose and support reforms that will to include within prepaid and group legal services plans both more moderate income persons and increased coverage for those legal problems that fall within the areas of unmet legal need that we have identified. We also recommend that the Resource Center involve the business community in developing preventive law and alternative dispute resolution projects. Private business associations, labor unions and philanthropic foundations have been the source of a

number of access to justice initiatives. Businesses and private labor unions were the pioneers in developing prepaid and group legal services plans. Some business associations, for example the Better Business Bureau, have helped create useful alternative dispute resolution models. These private sector representatives should be important partners in access-to-justice reform efforts.

We make other recommendations, as well, in Part IV of this report.

II. BACKGROUND

Before we turn to our Preliminary Findings (Part III) and Preliminary Recommendations (Part IV), we explain why and how the Taskforce was formed.

The Creation of the Taskforce

In early 1994, the Maryland State Bar Association ("MSBA"), the State's two law schools¹ and the Maryland Institute for Continuing Professional Educations of Lawyers, Inc. ("MICPEL") joined together to initiate The Access To Justice Project. The four partners had two goals: 1) to determine whether Maryland residents who have moderate incomes (which they defined as an annual household gross income between \$15,000 and \$45,000), are able to obtain effective access to justice in civil cases; and 2) to identify ways in which the four project partners, the State and the private sector can help persons of moderate income who need and want legal assistance to obtain it.

In December, 1994, the four partners, acting through P. Dennis Belman, then President of the Maryland State Bar Association, appointed this Taskforce. Herbert S. Garten, a former President of the Maryland State Bar Association and the current Chair of the Board of the

¹ The University of Baltimore School of Law and The University of Maryland School of Law.

Maryland Legal Services Corporation, agreed to chair the Taskforce. Our members include private lawyers (including a number of lawyers in small firms and solo practices), public attorneys, judges and law professors in Maryland.

Our Focus on the Unmet Legal Needs of Persons Who Have Moderate Incomes

In focusing on the legal needs of people who do not qualify for free legal aid, we do not ignore the unmet legal needs of the poor or the *pro bono* obligations of the private bar. Through its courts, legislature, bar associations, private and public lawyers and law schools, Maryland has done much to provide legal help to the poor.² Recently, Congress reduced the annual appropriation for indigent legal services in civil matters from more than \$400,000,000 to less than \$280,000,000, which amounts to about \$7.00 for each poor person in the country. Congress

² In 1981, The Maryland General Assembly was one of the first states to adopt an Interest On Lawyers' Trust Accounts Program, which pools lawyers' trust accounts that are too small and are held for too short a time to produce interest income for clients. The 1981 Maryland General Assembly also created the Maryland Legal Services Corporation to distribute the \$1,000,000 in annual IOLTA interest income to legal aid programs.

In 1987, the Advisory Council of The Maryland Legal Services Corporation, known as the "Cardin Commission" in honor of Congressman Benjamin Cardin who chaired it, made a series of recommendations that led to the expansion of lawyer volunteer efforts and the enactment of a comprehensive IOLTA Program, which now produces approximately \$3.5 million a year. In response to the Cardin Commission's recommendations, the MSBA established the People's Pro Bono Action Center, Inc. that, with the help of the Maryland Court of Appeals, has increased the level of *pro bono* legal services in the State of Maryland from 1,688 in 1989, to 5,600 in 1994.

The Cardin Commission also recommended that the State law schools require their students to provide civil legal services to the poor as a condition of graduation. With the help of Congressman Cardin, both law schools significantly expanded their clinical law programs, through which second or third year law students provide legal services to the poor. The University of Maryland School of Law requires all its day division students to provide legal help to the poor as a condition of graduation.

also placed severe restrictions on these funds. We will be called upon to do more in the future to provide civil legal services to the poor, and we will answer that call.

A statewide committee, the Maryland Coalition for Civil Justice, is now analyzing the Maryland legal services delivery system for the poor in response to today's crisis. The membership of the Coalition and our Taskforce overlaps, and a number of us have attended many of the Coalition's meetings. Also, we have shared information with the Coalition. Although the Coalition has not yet issued its report, we expect that our Taskforce and the Coalition will make consistent, and in some respects interrelated, proposals.

Maryland and national legal needs surveys, which we discuss below, establish that poor and moderate-income persons have very similar legal problems and a shared need for additional legal help. For far too long, the unmet legal needs of those two groups have been considered independently; in isolation from each other. We expect and intend that our recommendations, if implemented, will benefit the poor as well as moderate-income people. We are providing a copy of this report to the Coalition to identify ways in which we might further work together to achieve the access to justice goal for both populations.

III. PRELIMINARY FINDINGS

The Quantitative ABA National Survey Findings and Maryland Mason-Dixon Survey Findings

Before the four project partners initiated this project, they knew from their collective experience that there were many people in Maryland whose incomes disqualified them for free legal aid, but who could not (or chose not to) seek legal assistance for significant legal problems. This impressionistic view was confirmed when, in March, 1994, the American Bar Association released its "Comprehensive Legal Needs Survey" of 3,087 of the nation's low to moderate

income households, the results of which we summarize below.

The four project partners expected the central finding of the ABA's National Survey - that many moderate income people cannot obtain effective access to justice - to be generally applicable in Maryland. They did not know, however, the full extent and dimensions of the access to justice problem in Maryland. Therefore, the project partners decided to commission a study to measure the unmet legal need in Maryland. The partners retained Mason-Dixon Political/Media Research, Inc. to conduct the study. Mason-Dixon conducted a statewide quantitative survey and convened four focus groups throughout the state to gather qualitative information.

The findings of the ABA National Survey and the Maryland Mason-Dixon Survey are consistent.

1. *A large number of middle and lower-income people have legal problems.* The ABA National Survey reported that approximately one-half of all households surveyed "face some situation that raised a legal issue during the twelve months of 1992."³ Mason-Dixon concluded that, in Maryland, "Marylanders whose income range is \$15,000-\$45,000 had at least one legal problem in 1994."⁴

2. *Most people of moderate income who have legal problems do not seek help from either lawyers or the legal system.* The ABA National Survey found that 61% of moderate

³ A.B.A. Consortium on Legal Services, *Legal Needs and Civil Justice: A Survey of Americans - Major Findings from the Comprehensive Legal Needs Study* (1994) ("*ABA National Survey.*")

⁴ *Mason-Dixon Political/Media Research, Inc., Maryland Legal Needs Assessment Survey 5* (February 1995) [hereinafter *Maryland Mason-Dixon Survey*](on file with Professor Michael Millemann, the University of Maryland School of Law).

income respondents who had legal problems had no interaction with the nation's legal justice systems.⁵ In Maryland, Mason-Dixon found that 72% of those who had legal problems did not contact a lawyer. (Of those 28% who did contact a lawyer, 73% of them retained counsel.)

Two of the most frequent reasons offered by the Maryland respondents for not contacting a lawyer included cost and the lack of knowledge that the problem was a legal problem (or had a legal component).

However, the largest number of Maryland respondents who did not contact a lawyer (40%) gave "other/don't know" as their major "reason". There undoubtedly are a variety of factors subsumed in this residual category, including the reasons identified by the ABA National Survey for their respondents' decisions to avoid the justice system: "doubts that [seeking a remedy from the justice system] would help, ... a sense the problem was not serious enough, or the desire to handle matters on their own."⁶

⁵ *ABA National Survey*, *supra* note 3 at 12.

⁶ A.B.A. Consortium on Legal Services and the Public, *Agenda for Access: The American People and Civil Justice* at xiii (February 1996) ("*ABA Final Report*.")

We acknowledge that the general mistrust of lawyers and the understandable fear of litigation may have contributed to a number of the "other/don't know" responses. Public criticism of the *legal profession* is timeless and enduring. However, when clients are asked to rate *their own lawyers*, as opposed to lawyers in general, there is a significantly higher degree of satisfaction. The ABA Comprehensive Legal Needs Survey concluded that "[t]he overwhelming majority of those having turned to a lawyer rate that advocate highly on such attributes as honesty and attentiveness to the client." *ABA National Survey*, *supra* note 3 at 24.

When clients do criticize their lawyers, they often are criticizing our adversary process as well. In February, 1996, Consumer Reports reported the results of its survey of lawyers, to which approximately 30,000 readers responded. "In cases that involve no adversary, almost three-fourths of our readers were highly satisfied", it said. *When You Need a Lawyer*, Consumer Reports, February 1996 at 34, 37. In comparison, about one-half of the Consumer Reports readers were "highly satisfied" with their lawyers in adversary proceedings. More than one in four of the respondents who were represented in adversarial proceedings expressed dissatisfaction - "somewhat, very, or completely" - with "the speed with which their case was handled, how

The American Bar Association's Commission on NonLawyer Practice, which heard extensive testimony about the "widespread refusal" of moderate income persons "to use the justice system"⁷, attributed this to a number of factors:

- Many individuals believe either that their problems are not serious enough to justify retaining a lawyer (the cost will exceed the benefit), or that the problem will cost more to resolve than they can afford.
- "[F]or some kinds of specialized issues (for example, special education cases) few lawyers have the knowledge and experience needed."
- For some claims that involve "relatively low potential recoveries", there are no lawyers available.
- "[T]oo few lawyers [are] fluent in languages other than English who can handle the cases of non-English speaking clients."
- "[L]awyer's significant debt burdens and rising operating costs put lawyers under economic pressure to charge higher fees."⁸

3. *Among the most common areas of unmet legal need reported by both the ABA and Maryland Surveys were: consumer problems, housing problems, and family and domestic matters. Chart 1 sets forth relevant Maryland data.*⁹

well their lawyer kept them informed, or fees." *Id.* The greatest level of client dissatisfaction was in divorce and/or child custody cases.

These data suggest that we must address the access to justice problem not only by providing more efficient representation to unserved clients, but also by giving clients alternatives to the adversary process and improving the efficiency and fairness of that process. See Recommendations IV (B)(1) & (2)(c).

⁷ A.B.A. Commission on NonLawyer Practice, *NonLawyer Activity and Law Related Situations: A Report With Recommendations* at 4 (August 1995) ("*ABA Nonlawyer Activity Report*").

⁸ *Id.* at 4-5.

⁹ See *Maryland Mason Dixon Survey*, (note 4) at 5.

CHART 1

Legal Problem	% of Respondents Who Had Problem	% of Those w/ Problem That Contacted A Lawyer	% of Those Who Retained A Lawyer
Housing	15%	5% of 15%	0% of 15%
Employment	11%	46% of 11%	82% of 46%
Consumer	11%	16% of 11%	27% of 16%
Family/Domestic Law	9%	59% of 9%	85% of 59%
Small Business	7%	22% of 7%	70% of 22%
Traffic/Minor Crim/Juv	6%	37% of 6%	100% of 37%
Bankruptcy	6%	28% of 6%	60% of 28%
Environmental	6%	8% of 6%	67% of 8%
Special Education	6%	0% of 6%	0% of 0%
Personal Injury	5%	27% of 5%	75% of 27%
Civil Rights	5%	23% of 5%	86% of 23%
Health Care	5%	15% of 5%	80% of 15%
Tax Disputes	4%	35% of 4%	89% of 35%
Entitlements	3%	68% of 3%	46% of 68%
Real Estate	3%	16% of 3%	33% of 16%
Elder Law	2%	54% of 2%	86% of 54%
Wills & Adv. Dir.	1%	75% of 1%	100% of 75%

The ABA National Survey identified three of the four most prevalent legal needs of national respondents as "financial/consumer" (1st) (2d in the State survey); "housing/property" (2nd) (1st in the State survey); and "family/domestic" (4th) (4th in the State survey). The ABA National Survey identified "community/regional", a broad category of local legal problems, as

the 3rd most prevalent legal need of those surveyed.

4. *The most common source of client referrals to attorneys was informal: "friends" (ABA National Survey: 38%); "word of mouth" (Maryland Mason-Dixon Survey: 36%).* Thus, both surveys confirmed that informal sources of referral are more important than formal sources and advertising.

5. *Nine out of ten of the Maryland respondents (89%) reported that the lawyers whom they consulted did not give them the option of a reduced fee in return for the lawyer handling only part of the legal cost. In addition, only 10% of those surveyed stated that they belonged to a prepaid legal plan or had insurance that covered legal expenses.*

6. *Almost three-fourths of those surveyed in Maryland (73%) were not aware of any mediation services in their area that were available to resolve disputes without litigation.*

The Maryland Mason-Dixon Focus Groups

In early 1995, a number of Maryland attorneys took part in four regional focus group discussions about how the legal profession is serving, or failing to serve, people with incomes ranging from \$15,000 to \$45,000 a year. Arranged by region in groups of 6 to 9, from the Eastern Shore, Southern Maryland, Central Maryland and Western Maryland, the focus groups included practicing attorneys and judges, as well as a paralegal and the head of a domestic violence program.

The focus groups generally agreed that access to justice is difficult for low- and moderate-income people. Some potential clients must overcome an inability to pay a standard fee. For others, an equally significant barrier may be posed by public misapprehension of the

legal system.

Some clients don't recognize at first that they have a ripening legal problem, or decide not to confront it, preferring to avoid the expense of lawyers. They may not realize that involving a lawyer early can save trouble and expense later on. Or, if they contact a lawyer cold over the telephone, the initially quoted fee may deter them from retaining the lawyer. Potential clients may not realize that fee arrangements can be negotiated and reduced once they sit down with a lawyer.

The focus group participants identified, but did not necessarily agree upon, a variety of measures to increase access to justice. Many of these centered on education - both of low- and moderate-income persons and of the attorneys who aim to serve them.

The participants suggested that attorneys could be aided in serving such clients if a statewide database or software package were available to help them grasp complex areas of law more quickly and simplify application of the law. Attorneys might also then begin to recognize no-fee or low-fee work as a loss leader that can generate profitable work in the future.

The lawyers in the groups mentioned several ways the profession could deploy its services more effectively on behalf of moderate income clients. Some involved streamlining litigation or circumventing it altogether through a broader practice of alternative dispute resolution.

Other proposals focused on making lawyers more affordable. Referral panels should be interdisciplinary and capable of counseling clients not just on legal issues, but on family, social, psychological and other problems that they bring. Homebound and retired lawyers could be used more widely in referral of reduced-fee clients. The Maryland Bar could certify specialty

practices. Senior lawyers could advise fledgling lawyers handling low-fee cases. Law students could serve as interns, similar to those in the medical profession, and take on low-fee cases that come to a particular firm.

We adopt in our preliminary recommendations many of these recommendations. We thank the focus groups' participants for their very helpful observations and recommendations.

IV. PRELIMINARY RECOMMENDATIONS

Our first recommendation is that *this Taskforce remain in existence to consider the comments of all interested parties, hold a public hearing (or hearings), issue its final report and help the four project partners begin to implement the final Taskforce recommendations.* We hope to complete our additional work within the next 18 months. We suggest timeframes for the various action items that fall within this 18 month period. When we don't recommend specific timeframes, we generally recommend that the proposed task be completed in 18 months.

We make and organize our recommendations in two general categories: A) recommendations that we believe would increase the quality and quantity of legal services that lawyers provide to moderate-income persons in the areas of documented unmet legal need; and B) recommendations that we believe would help unrepresented or partially represented moderate-income persons obtain more just and efficient resolutions of their disputes.

These two categories of recommendations are interrelated. For example, insofar as the Part B recommendations would simplify and streamline dispute resolution, they would make it more likely that people of moderate income could afford legal representation, and thereby would increase the extent of legal representation, which is the goal of our Part A recommendations.

A. Recommendations To Increase The Quality And Quantity Of Legal Services That Lawyers Provide To Moderate-Income Persons In The Areas Of Documented Unmet Legal Need.

We subdivide these recommendations into two interrelated subcategories: 1) recommendations aimed at increasing the supply of available legal services; and 2) recommendations aimed at providing moderate-income consumers with the information they need to make informed decisions about whether, when and how to retain a lawyer.

1. Recommendations aimed at increasing the supply of available legal services.

a. *The State's two law school should review their curricula and consider developing new courses (or new components of existing courses) that: (i) expand coverage of the substantive areas of unmet legal need that we have identified; and (ii) introduce law students to the professional responsibility and law practice issues associated with the delivery of legal services to moderate-income clients. We propose that the law schools undertake and complete this curriculum review during 1996. Law students and lawyers can better serve moderate-income persons if they know more about both the substantive bodies of law in which there is substantial unmet legal need and creative and efficient ways in which they can meet that need.*

b. *MICPEL should review its curriculum and develop new courses (or new components of existing courses) that: (i) expand coverage of the substantive areas of unmet legal need that we have identified; and (ii) provide interested lawyers with more information about the professional responsibility and law practice issues associated with the delivery of legal services to moderate-income clients. We propose that MICPEL also undertake and complete this curriculum review during 1996.*

We recommend that the law schools and MICPEL coordinate their curricula reviews and

revisions to provide a coherent continuum of education that is consistent with the mission of each.

c. The four project partners should work together to establish an on-line statewide database for lawyers who wish to provide legal services to people of moderate income in the areas of documented unmet legal need. This database should:

i. Contain relevant MICPEL, MSBA, law school and other legal materials.

ii. Contain additional practice aids: legal forms - interview guides, pleadings, memoranda of law and briefs, and transactional documents, for example - that would help a lawyer who is not experienced in an unmet legal need practice area to identify and to understand legal issues and to effectively represent moderate-income clients.

iii. Contain an electronic referral system/bulletin board, which would allow lawyers for moderate-income clients to provide consultation and referrals to each other.

iv. Be available only to lawyers who represented, or undertook to represent, moderate-income clients in documented areas of unmet legal need.

d. The four project partners should work together to establish a staffed Justice Resource Center to consult with private attorneys who represent, or undertake to represent, moderate-income persons who have legal problems like those identified in this report, and to perform the other duties that we describe below. Such a center could also create and maintain the database.

Through Recommendations c and d, we seek to add those technical assistance and consulting services that attorneys, especially less experienced attorneys, might need to efficiently provide increased legal help to moderate-income clients in areas of unmet legal need.

We do not propose creation of a new bureaucracy, although the Resource Center should have at least one (perhaps part-time) staff member who has the technological capacity to establish and maintain the database, and an experienced lawyer who can provide useful advice to interested private attorneys. The faculty and students of the State's two law schools might play important roles in the design and implementation of the Resource Center concept.

We expect that the planning phase of the database and Resource Center would take 3-6 months, and that it would take another 6-12 months to identify funding for, and establish both. When they are established, the database and Resource Center might be funded (at least in significant part) by attorney user fees.

We recommend that the four project partners consider creating a new nonprofit corporation to establish and maintain the database, to house the Resource Center, and to assume responsibility for developing and administering the experimental law office, hotline, legal outreach program and the other projects that we propose below.¹⁰ This new entity might also help implement our recommendations that the judiciary, with the assistance of the four project partners, take additional steps to simplify the adjudicatory process, provide increased help to *pro se* litigants, and make greater use of alternative dispute-resolution methods.¹¹

We propose the nonprofit corporation idea because it appears to be an effective device for coordinating and channeling the work of the four partners, without burdening any one with primary responsibility for implementing the recommendations. Each of the four partners has its own institutional mission, none of which encompasses all the recommendations we make. Each

¹⁰ See recommendations IV(A)(1)(e), IV(A)(2)(a), (b) and IV(A)(2)(c)(ii).

¹¹ See recommendation IV(B)(1), (2) & (3).

partner has a role to play in implementing some, but certainly not all, of the recommendations. Moreover, new resources will be required to implement the Taskforce's recommendations. It is unfair to ask one of the partners to assume disproportionate responsibility for raising these funds.

e. The four partners should support the development of an experimental solo or small firm law office, in the nature of a laboratory, that tests various approaches to providing legal help to moderate-income clients in areas of documented unmet legal need.

The working hypothesis of the Access To Justice Project is that it is possible for lawyers to earn a living and improve the quality and increase the quantity of legal services that they provide to moderate-income clients in areas of unmet legal need. There is evidence to support this hypothesis. We have conducted a series of interviews with lawyers in existing solo and small firm practices who creatively and successfully provide legal help to moderate-income clients in two areas of unmet legal need: family law and consumer law. We have chosen these two practice areas not only because they rank high on the "unmet legal need" scale, but also because, together, they create a relatively-simple-to-complex continuum of legal problems and therefore pose quite different access to justice challenges. Our interviews with these family and consumer law lawyers have informed this report. When we issue our final report, we will summarize these interviews in an appendix to it.

In the consumer area, the practices tend to focus on either major litigation (often class action cases) or recurring types of individual cases or both. These cases usually are based upon statutory violations. There are a large number of fee-shifting statutes that generate legal fees for attorneys in successful cases.

In the family law area, we have focused on private practices in which attorneys partially represent moderate-income clients and/or help them represent themselves. There are many well-established and successful practices in which private attorneys fully represent clients in domestic cases. It therefore may be necessary to develop new forms of practice to convert unmet family law needs into new practice opportunities.

Our interviews with these successful practitioners convince us that it is possible to "do well" (or at least "o.k.") and "do good" by representing moderate-income clients in areas of unmet legal need.

The next step, we believe, is to develop a practice "laboratory" in which the four project partners, through the proposed new Resource Center, could experiment with the recurrent low overhead, high technology, specialized law practice model that the successful practitioners whom we interviewed generally employed.

Two warnings are in order.

A Laboratory Not A Competitor.

First, we do *not* propose that the project partners create or sponsor an enduring private law practice that would compete with private attorneys. We use the word "laboratory" to distinguish an experiment from a competitor. The experimental office will not respond solely to market forces. It will take risks to identify potential new private practice opportunities. It will export its successes to Maryland's bar and law schools. However, even its "failures" will be instructive, for example, by identifying moderate-income clients whose legal problems will not support a private practice and thereby identifying those legal problems that must be reserved for scarce *pro bono* and subsidized legal aid resources.

Not A "Clinic"

Second, we do not intend our proposed experimental office to be a recycled "clinic". In the early 1970s, lawyers began to develop high volume law practices, called "clinics", that catered to the middle and lower-middle classes. One of the most successful was Jacoby & Meyers. The clinic formula included locating offices in neighborhoods, particularly neighborhoods with convenient parking; seeing clients after work and on Saturdays; offering low flat fees and either no-cost or low-cost consultations; and letting clients pay by credit card. By 1977, a number of firms had joined together to form The American Legal Clinic Association.

In 1994, one commentator said (with some overstatement) that, approximately two decades after it had begun, "the legal clinic movement is dead."¹² The American Legal Clinic Association has disbanded. Jacoby & Meyers has been dissolved, and Hyatt Legal Services - "in 1986 the second-largest law firm in America, with 674 attorneys - . . . fell off the National Law Journal's annual survey of the nation's 250 largest firms [1994]."¹³

Observers have offered many reasons for the disappearance of clinics, particularly the mega-clinics. Many of the clinics relied on high cost advertising, rather than strong relationships with local communities, groups and organizations, as sources of clients. Consequently, the clinics could not limit overhead.

¹² Mike France, *Legal Clinics: Lights Go Out for Storefronts*, The Nat'l L. J., December 12, 1994, at A1, A24.

¹³ *Id.* at A24. A commission of the New York State Bar Association that investigated the growth and decline of legal clinics in New York reported that "even the largest of them has now drastically reduced the size and scope of its practice and has concentrated its emphasis almost completely in personal injury litigation." New York State Bar Commission on Providing Access to Legal Services for Middle Income Consumers, *Report and Recommendations to the House of Delegates* 1, 4-5 (April 1996).

Clinics also relied heavily on first and second-year lawyers, who did not have adequate legal experience to represent the large numbers of clients that were assigned to them. The clinics often paid these lawyers relatively low annual salaries and worked them longer hours than many of their friends in more established firms. The result was high turnover and continual disruption of client representation.

The number of lawyers competing for clients also increased dramatically, many of whom adopted the low overhead - large volume strategy of the clinics.¹⁴ The rapid spread of computer technology helped many sole practitioners and small law firms undercut the larger clinics.

In the words of Hyatt's managing partner, J. Roger Crombie, the clinic experience demonstrated that providing legal services to clients is not the same as selling "cheeseburgers, fries and shakes."¹⁵

The practice laboratory that we envision would feature not only low overhead and technology (as did the clinics), but also specialized practices in areas of unmet legal need, access to experienced lawyers or mentors, reliance on contract-employees, strong community roots - through relationships with local groups, organizations and institutions - and realistic (i.e. moderate) income expectations.

We anticipate that the planning phase of the experimental law office would take 3-6 months, and that it would take another 6-12 months to identify funding for, and establish it. When it is established, it might be funded (at least in significant part) by client fees.

¹⁴ In 1972, the year that Jacoby & Meyers opened its first office in California, only 20,485 new attorneys were admitted to practice nationally. In 1992, 54,577 new attorneys were admitted. *Id.* at A24.

¹⁵ *Id.* at A24.

2. Recommendations aimed at providing moderate-income consumers with the information they need to make informed decisions about whether, when, and how to retain a lawyer.

Helping private attorneys more efficiently represent people of moderate income in areas of unmet legal need is only part of the solution to the access to justice problem. The other part, which we believe may be the more important component, is to provide the legal information and initial legal "diagnostic" services that moderate-income people need to determine whether they have a legal problem, to identify that legal problem and to determine whether it is cost-effective to retain a lawyer to resolve it. The absence of legal information and diagnostic services is a major obstacle to the delivery of legal services to people of moderate income.

a. *The four project partners should help develop a state-wide hotline that gives potential moderate income clients the opportunity to determine whether they have a legal problem for which legal assistance is useful and reasonably possible. This hotline might:* a) be staffed by lawyers, including volunteers; b) help callers determine if they need and can reasonably afford legal help, including legal help for a reduced fee; c) make appropriate referrals to panels of specialized and qualified attorneys, developed in conjunction with the State's existing local referral systems; and d) be funded by a reasonable user's fee; a portion of the attorney's fee (to be shared with the local referral office) from referred cases that result in representation; foundations; and other sources. The proposed Resource Center might administer the hotline.

b. *The four project partners should provide information about the hotline and other legal information, in multi-media form, to moderate-income persons. This information should be provided through decentralized sites that are readily available to potential users: courthouses, libraries, municipal buildings, schools, social services centers and community*

centers, among other local sites. Court clerks, community leaders, officials, teachers, lay advocates, social workers and other nonlawyers often initially field requests for legal help. They are best situated, and often are the most qualified, to help the party with the problem to obtain legal representation.

The best sources of preliminary information about the law and legal resources may be lay advocates, if they are properly trained. The most effective "classrooms" often will be community-based. We recommend that the four project partners develop an organized system for providing legal information, and for training lay advocates to explain it, to people of moderate income.

We expect that the planning phase for the hotline and decentralized legal educational program would take 3-6 months, and that it would take another 6-12 months to identify funding for, and establish both.

c. The four project partners should develop both targeted educational programs for attorneys and, if appropriate, proposed revisions of laws and court rules that may be necessary and appropriate to expand prepaid and group legal services plans in Maryland and to test and develop ethically acceptable "discreet-task" or "unbundled" legal services models of practice. To begin this effort, the project partners should sponsor a statewide conference on these forms of practice.

Prepaid legal services, group legal services and "discreet task" or "unbundled" legal services may be effective ways to meet consumer-identified legal needs that more traditional forms of law practice do not satisfy. Indeed, moderate-income people often identify and express legal needs *only* to lawyers in these forms of practice.

i. *Prepaid legal services.* Employers, unions, credit-card companies, insurance carriers, and other organizations sponsor prepaid plans that give people with moderate incomes access to a limited range of legal help for a fixed, usually relatively moderate (\$100 - \$250) annual fee.

People who are reluctant to approach an individual attorney, often enroll in these prepaid plans. A Maryland lawyer who has represented a large number of prepaid clients says they have a common "fear of lawyers". Most avoided lawyers because they "did not trust them, didn't think a lawyer could help, and believed the cost of the services would be beyond their means." ¹⁶

Charts 2 and 3 identify the types of prepaid legal plans and the extent to which they exist in Maryland.

Chart 2
Types of Prepaid Legal Plans

Plan	Enrollment	Employee Cost	Coverage
Employer paid	Automatic	None	High
Payroll deduction	Voluntary	High	High
Union paid	Automatic	None	Low-high
<u>Employee Assistance Programs</u>	Automatic	None	Low
Individual	Voluntary	High	Low-medium
Military	Automatic	None	Medium
Student	Automatic	None	Low-medium

Source: National Resource Center for Consumers of Legal Services, (cited in The Daily Record (March 23, 1996)).

¹⁶ *Bradley A. Kukuk, Like HMO's, Prepaid Legal Plans Serving More of the Population, The Daily Record, March 23, 1996, at 1, 8-9.*

Chart 3
Maryland's Prepaid Legal Companies

Plan	Total clients/Md. clients	Cost
Union Privilege Legal Services	15 million/180,000	No charge to employee
Legal Services Plan of America (Montgomery Ward)	531,000/23,613	\$8.99 mo.
National Education Association	45,222/N/A	No charge
Prepaid Legal Services, Inc.	N/A/3,980	\$16 mo. or \$192 year
Service Station Auto Repair Assoc.	N/A/1,400	No charge to members

Source: Md. Attorney General Consumer Protection Division, (cited in The Daily Record (March 23, 1996)).

Prepaid plans usually provide legal help with wills, estates, real estate closings, divorce, and custody problems, among others. They generally provide members with free telephone consultations, "free letter writing and phone calls by the attorney, and free initial consultations". Most of the plans also "offer no-cost or heavily discounted hourly rates for more involved representation." Prepaid legal coverage is a free employee benefit for almost three-fourths of those people who are enrolled in such plans.¹⁷

In addition to reducing the public's general anxiety about using lawyers, prepaid plans encourage clients to talk to their attorneys before a legal problem matures into a crisis. We enthusiastically endorse the expansion of early advice efforts that will prevent - or at least

¹⁷ *Id.*

significantly mitigate - legal problems.

However, there has been no significant growth in prepaid plans in recent years. By 1983, 4 million people were covered by employer-paid plans. This number increased to 7.3 million in 1991, but grew to only 7.6 million by the end of 1994¹⁸; by then, the tax break that allowed employers to deduct the cost of employer-paid plans, which had an original "sunset" provision had expired. At that time, employers also were reducing both employee benefits, which often included the coverage provided by prepaid plans, as well as the numbers of their employees.

Individually funded plans are growing in some states. Although there are private plans operating in Maryland, Rule 7.3 of the Maryland Rules of Professional Conduct may deter lawyers from developing private plans. This rule limits the sponsor of a prepaid plan to "a bonafide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization".¹⁹ The Comment to the proposed American Bar Association's Model Rule 7.3, by comparison, authorizes lawyers to directly contact potential clients in order to establish individual prepaid plans.²⁰

- *We recommend that the four project partners coordinate the provision of information about prepaid plans by the sponsors of such plans so that interested lawyers, businesses, unions, groups, associations and individuals can:*

- participate in those plans or work with appropriate groups to develop new plans;

¹⁸ See Mike France, *supra* note 12 at A24 (citing National Resource Center for Consumers of Legal Services).

¹⁹ *Maryland Rules of Professional Conduct*, Rule 7.3(3) (1995).

²⁰ *Proposed Model Rules of Professional Conduct*, Rule 7.3.

• work with the sponsors of prepaid and group plans to include within them additional coverage for legal problems within the areas of documented unmet legal need; and

• *consider, after the proposed conference, whether the organized bar should recommend to The Maryland Rules Committee that Rule 7.3 be amended to encourage the development of additional prepaid plans, particularly private individual plans.*²¹

ii. *Group legal services.* Group legal services plans provide clients, including moderate-income clients, with effective access to attorneys who provide reduced fee representation in return for group sanctioned marketing. This is a very effective, and we believe underutilized, mechanism by which attorneys can provide basic legal assistance to moderate-income persons for reduced fees.

A good example of a group legal services plan is one sponsored by the American Association of Retired Persons. The AARP recruits and selects participating attorneys. The participating lawyers jointly pay for ads in their local yellow pages. The AARP includes in its national publications references to the AARP-approved lawyers, and it informs its members that their names, along with the AARP stamp of approval, can be found in their local yellow pages. In return, the participating lawyers charge the AARP members reduced fees.

• *We recommend, as we have with prepaid plans, that the four project partners provide information to private attorneys, groups and organizations - including information provided at*

²¹ Part of the research task will be to determine the interplay between that portion of Rule 7.3(3) that is quoted above and Section 13-206(a) of Maryland's Commercial Law Article, which defines a "legal assistance organization" to mean "a firm, group, corporation, or other entity which recommends, furnishes, arranges, or pays for legal services for its own members or beneficiaries, whether or not for profit". This statute, which was enacted in 1977, apparently may recognize a larger number of legal assistance organizations than does Rule 7.3(3), which became effective in 1987.

the statewide summit conference, about how they can participate in and create or expand group legal services plans that may help moderate-income persons obtain legal help in the areas of documented unmet legal need.

iii. *Unbundled or discreet task representation*. Increasingly people who have civil legal problems are representing themselves in court or before administrative agencies. Some do so because they cannot afford to pay the hourly or case fees set by attorneys. Others who represent themselves may not understand that their legal problems are serious or that a lawyer can help them, or they may fear losing control over litigation decisionmaking.

In recent years, some lawyers have established unbundled or discrete task representation practices in which they accept responsibility for only some tasks. The client (usually) or another party agrees to perform the others.

In its most limited form, this is nothing new. Lawyers traditionally have provided only legal information and limited advice rather than the full array of litigation services in some cases, for example, to corporate clients, to the individual client in the otherwise uncontested divorce case who is negotiating a pension benefits issue with his spouse; to the small-business owner who is doing her own debt collection work; or to the landlord or tenant who is involved in an eviction proceeding.

What is new is the *extent* to which some lawyers and clients are transforming the traditional role. Increasingly, clients are retaining responsibility for doing most of the representational work and the attorney is functioning as a teacher, coach, advisor or counselor.

Advocates of this approach claim that it enhances the ability of people who otherwise

intend to represent themselves to obtain a fair result; improves the public image of lawyers (by offering a flexible and accommodating legal services model that empowers clients); restores to lawyers a competitive advantage over legal technicians, non-lawyer advocates and commercially available self-help manuals; and contributes to the efficient and fair administration of justice by better preparing *pro se* litigants for the adversarial process.

To the extent that the discreet task approach gives some legal help to litigants who otherwise would represent themselves without any legal assistance, there is much potential merit in it. The number of *pro se* litigants is increasing significantly, particularly in domestic cases:

In 1980, 76 percent of [domestic] cases involved at least one lawyer, generally two; leaving both parties unrepresented in 24 percent of the cases. In 1985 both parties were unrepresented in 47 percent of the cases. In less than 6 years, the number of families handling their entire divorce without any lawyers doubled! . . . In 1990, 52 percent of families obtained a divorce without any attorney, and in 88 percent of cases, at least one party was either self-represented or defaulted.²²

The dangers of "going it alone" entirely are real and substantial. "*Pro se* litigants make less use of temporary orders, obtain less spousal maintenance, obtain tax advice less often and use less alternative dispute resolution."²³ Lawyers who provide discreet legal representation may well be able to help *pro se* litigants obtain fairer results by, for example, conducting a diagnostic

²² Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 Fam. L. Q. 421, 427 (No. 3, 1994)(citing the American Bar Association Standing Committee on the Delivery of Legal Services, *Responding to the Needs of the Self-represented Divorce Litigants* (1994)).

²³ A.B.A. Standing Committee on the Delivery of Legal Services, *Responding to the Needs of the Self-Represented Divorce Litigant* (1994).

assessment of a *pro se* litigant's case and "coaching" the litigant on settlement, options to traditional adjudication, on child and spousal support guidelines, and for hearings and trials.²⁴

Critics of unbundled legal services question the capacity of many people to represent themselves, and point to ethical issues raised by discreet task representation. Although lawyers can ethically enter into limited retainer agreements with clients in which they narrowly define work they intend to do on behalf of a client, it might be misleading to promise to perform only part of a task that logically and functionally cannot be severed into separate pieces.

Moreover, both the Federal Rules of Civil Procedure and the Maryland Rules of Procedure require lawyers to warrant that there are good grounds to support pleadings that they

²⁴ *Id.* See also Leigh Perkins, "Unbundling" Your Services Make Some Clients Happy, 1995 LWUSA 1181-83 (December 18, 1995).

The discrete task approach is being used, and has been recommended in other countries, for example, Great Britain. In June 1995, The Right Honorable Lord Woolf issued an Interim Report to England's Lord Chancellor, the rough equivalent of our United States Attorney General, in which, among many other recommendations, he said:

Not all litigants need assistance with every aspect of their case. Some may be able to undertake much of the preparatory and paperwork themselves and need access to competent advice only at key points in the progress of their case. Initially this could be as to the validity of their claim or defense and the way in which they should seek to prove it. This should then be followed up at key stages, particularly in assessing whether an offer from the other side should be accepted... "Unbundling" involves the "bundle" of work that has to be done on the case being taken apart and shared between the adviser and the litigant. In terms of paying clients there may be a need to work out new arrangements for professional negligence insurance but I am confident that this is something that can be done with the good will of the profession and the commitment of the professional bodies. This would offer a real way forward in making justice accessible and understandable to those on moderate incomes who are currently not eligible for legal aid.

The Right Honorable Lord Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*, § IV, ¶¶ 39 and 40 (1995).

file on behalf of clients. If a lawyer helps a *pro se* client prepare a pleading, must the lawyer sign the pleading? To what extent can the discrete task lawyer ethically limit the factfinding and legal research that may be necessary to assure there are good grounds for the "*pro se*" pleading?

In addition, our ethical rules often assume that both sides are represented by counsel. Whether a client who has a discrete task lawyer is "represented" by counsel or not has important consequences. For example, Rule 4.2 of Maryland's Rules of Professional Conduct prohibits a lawyer from directly or indirectly communicating with a represented party. Will a lawyer who coaches a client to directly negotiate with an opposing party who is represented by counsel be deemed to have violated this rule?²⁵

The unbundled approach possess certain as-yet unanswered professional liability questions as well. Some carriers undoubtedly would contend that the traditional policy does not envision, and therefore does not insure against, the risks created by discrete task representation.

We do not mean to suggest that these ethical and professional liability concerns are irresolvable. Recently, for example, the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee in Ethics Opinion No. 483, concluded that:

[a]n attorney may limit the attorney's services by agreement with [a self-representing] litigant to consultation on procedures and preparation of pleadings to be filed by the client in pro per. A litigant may be either self-represented or represented by counsel, but not both at once, unless approved by the court; therefore, in order for the attorney to especially appear on behalf of the litigant before the court for a limited purpose, the attorney should comply with all applicable court rules and procedures of the particular

²⁵ See Cal. State Bar Comm. on Professional Responsibility, Formal Op. 131 (1993).

tribunal.²⁶

In its Final Report, the ABA recommends that the profession "encourage discrete-task delivery of legal services." The ABA explains:

A task-orientation to personal legal services looks upon the practice of law as a sequence of distinct activities. These might range from a single task to full representation. Clients are encouraged to select from a 'menu' of potential tasks a lawyer might perform. Proponents of this conception of the practice of law identify such tasks as advice, research, drafting, and representation in court or negotiation. It is envisioned that services offered task-at-a-time will be of equal quality to those provided through full representation.²⁷

'We agree with the ABA National Survey that "professional standards" should not "stifle development of new ways of providing legal services in which clients and lawyers are protected while the broader public interest is also served",²⁸ especially when the underlying right that may be implemented is the partially represented litigant's fundamental right of access to the courts. However, we think more structured experimentation and evaluation are necessary to test this idea.

- *We recommend that, during the next 3-6 months, the four partners:*

- *develop a structured way of testing and evaluating the discreet-task representational concept in one or more areas of unmet legal need;*

²⁶ Los Angeles County Bar Association's Professional Responsibility and Ethics Comm., Ethics Opinion 483/Limited Representation of in pro per litigants p. 49 (*reprinted in The Los Angeles Lawyer*, February 1996).

²⁷ *ABA Final Report*, *supra* note 6.

²⁸ *ABA National Survey*, *supra* note 3.

- *working in conjunction with the Ethics Committee of the MSBA, Maryland Attorney Grievance Commission and the Maryland Rules Committee, to identify revisions, if any, that should be proposed in Maryland's Rules of Professional Conduct; and*
- *develop a model retainer agreement and a model malpractice insurance policy for a discreet task form of practice.*

We stand ready to help with these tasks.

B. Recommendations that we believe would help unrepresented or partially represented moderate-income persons obtain more just and efficient resolutions of their disputes.

It is profoundly unfortunate, but a contemporary reality, that all people of moderate income who want legal assistance to assert or defend meritorious claims can not receive this basic help. We make several recommendations to make our formal dispute-resolution systems more readily available and user friendly to partially represented and unrepresented parties.

1. The State Should Take Additional Steps to Simplify the Adjudicatory Process, provide help to pro se litigants, and make greater use of Alternative Dispute Resolution.

We agree with the ABA's recommendation that courts should be more approachable for both moderate-income litigants and lawyers who represent them. The "working poor" should be able to come to court during flexible hours that accommodate day jobs. Working with the judicial system, the profession should do more to simplify forms and procedures. "The time of judges, clerks and attorneys is used more efficiently if confusion about procedures is minimized."²⁹

²⁹ *Agenda For Access: The American People and Civil Justice, Final Report on the Implications of the Comprehensive Legal Needs Study, A National Survey, American Bar Association's Consortium on Legal Services and the Public (Feb. 1996) at 24 ("ABA's Agenda for Access").*

To make courts "more approachable", several jurisdictions have developed in courthouses "self-service centers" and "multi-door courthouses." The Maricopa County Superior Court in Phoenix, Arizona has been a national self-help pioneer. Arizonians can - by telephone, computer or in person - obtain help to a range of services, including "6 hours of recorded legal information", "a home page on the Internet", forms and advice about how to use them from a computerized kiosk, and a "half-hour's legal advice for free to low-income people and for a fee to wealthier customers".³⁰

In Houston, Texas, trained intake "diagnosticians" are the entry point in Houston's multi-door courthouse. Unrepresented litigants are referred to the appropriate "door" or dispute-resolution service, which include judicial adjudication (for cases that likely will not be resolved amicably), mediation (through Houston's Neighborhood Justice Centers) and arbitration.³¹

In Maryland, The University of Baltimore and Maryland Schools of Law, through supervised law student clinical projects, have been providing legal information and advice to unrepresented litigants in domestic cases in four jurisdictions: Anne Arundel County, Baltimore City, Baltimore County and Montgomery Country. Both law schools give the law students intensive training. The supervised law students provide legal information to all unrepresented litigants who request it. The students interview financially eligible clients, advise them about

³⁰ Sandy Banisky, *Arizonans Get Legal Aid In A Jiffy - By Computer*, The Baltimore Sun at 1, 5A (April 8, 1996).

³¹ Initial evaluations of the Multi-Door Courthouse in Houston, as well as similar projects in Washington, D.C. and Tulsa, Oklahoma, "show that 90 percent of the clients using the intake system are satisfied and 92 percent indicated they would use the program again." New York State Bar Commission on Providing Access to Legal Services for Middle Income Consumers, *Report and Recommendations to the House of Delegates* 1, 25 (April 1996).

their cases and help them fill out the appropriate simplified forms. In a very recent report, supported by an external evaluation, the University of Maryland School of Law found that the project, which served over 4,400 people, was successful in accomplishing its access-to-justice goal.³²

By reciting these experiments we do not endorse them all without reservation. We do, however, believe that there are components of these experiments that have been successful and should be replicated in Maryland.

2. We recommend that the State judiciary, with the support and assistance of the four project partners, establish a demonstration project in one or more of the State's district and/or circuit courthouses that, if successful, might be replicated in the other courthouses.

The recommended demonstration project should:

a. *include an on-site legal information center.* Although the legal information center should include printed information, video (VCR) capacity and interactive computer assistance, it should be staffed by a person who is trained and responsible for helping unrepresented litigants. For many unrepresented litigants, a self-help center, no matter how well designed, will not be enough. There will be a need for personal assistance.

As long as the helper provides legal information rather than legal advice, the person need not be a lawyer. That is, the helper can show the unrepresented litigant how to operate the legal information center and can generally explain the process and law. The lay person may not, however, practice law by giving legal advice to the unrepresented client.

³² Report on The University of Maryland School of Law's Family-Law Assisted Pro Se Project in Anne Arundel and Montgomery Counties, and Recommendations (May 31, 1996) (Draft).

We fully acknowledge that there is no bright line distinction between legal information and legal advice, but the Maryland Attorney General has recently issued a useful Opinion that helps clarify the distinction and makes it clear that trained lay advocates can provide much useful legal information.³³

b. *develop additional simplified pleading forms like those now used in domestic and family law litigation, to help unrepresented litigants effectively assert claims and defenses.*

Although the "shakedown" trial of the simplified domestic and family law forms is not complete, there are many reasons to believe that it has been successful and will be even more successful in the future. We see no reason why courthouses, initially the demonstration project courthouse(s), should not provide simplified pleading forms in other practice areas, particularly those in which indigent litigants and litigants of moderate income are representing themselves. We understand that it might be impossible to test simplified pleadings forms in only one or a limited number of courthouses. We hope this is not so. If it is, we recommend that additional simplified pleading forms be developed on a statewide basis, one practice specialty at a time.

³³ In a recent opinion, J. Joseph Curran, Jr., Maryland's Attorney General, concluded that a lay advocate could provide "basic information about the existence of legal rights and remedies" and "about the manner in which judicial proceedings are conducted", but may not provide either "advice" about whether one person's "particular circumstances suggest that she should pursue a particular remedy" or information, in the nature of advice, "about the legal aspects of judicial proceedings, such as how to present a case, call witnesses, introduce evidence, and the like." A lay advocate *may* help one "prepare a legal pleading or other legal document on her own behalf by defining unfamiliar terms on a form, explaining where on a form the victim is to provide certain information, and if necessary, transcribing or otherwise recording the victim's own words verbatim." But the lay advocate may not "use the advocate's own language in preparing or filling out forms, pleadings or other legal documents" or "engage in advocacy before any governmental representative on behalf of an individual...". Md. Op. Att'y Gen. 95-056 (December 19, 1995) (discussing the rights of, and restrictions on, lay advocates who are not supervised by lawyers and who provide services to victims of domestic violence).

c. *expand the use of mediation and conciliation in appropriate pro se cases.* We appreciate both sets of voices in the debate about the appropriate role of mediation and conciliation in *pro se* cases, those who believe it can be effective and those who are skeptical, especially in cases in which there is a power imbalance between the parties, for example, domestic violence cases. Maryland Rule S73A, for example, limits the mandatory referral for mediation of custody or visitation disputes to cases in which "both parties are represented by counsel".

We believe that one of the purposes of the pilot project that we propose should be to test and evaluate the expanded use of mediation, either by consent of the parties or by court order, in selected *pro se* cases in order to provide a basis for future mediation recommendations. We reiterate that one of the most powerful sources of litigant discontent is the adversary process itself. We believe that the careful expansion of mediation will not only increase the access that people of moderate income have to formal decisionmaking, but will also increase consumer satisfaction with the decisions and decisionmaking process.

3. The Maryland Attorney General should empanel an intergovernmental access to justice commission, with representation from our Taskforce. We hope the commission would identify government access to justice barriers, develop reforms and implement them. The commission's goal would be to help our citizens better identify, understand and comply with the often complex array of statutes, rules, regulations and policies that they confront on a daily basis.

Specifically, we ask this commission to consider reforms that would:

a. reduce and consolidate administrative rules, regulations and policies;

b. rewrite them in plain English;

c. develop multi-media self-help legal educational programs;

d. identify and train, within each State agency, a legal information officer who is readily available to the public;

e. where appropriate, reasonably limit decisional discretion that produces unnecessary factual and legal disputes (as the State Legislature did, for example, when it enacted child support guidelines that eliminated or narrowed the range of disputes in domestic cases);
and

f. otherwise revise and simplify law and judicial and administrative processes to make laws more self-executing where it is reasonably possible to do so, and to make civil law enforcement processes more user-friendly.

Government's primary purpose is to enact and enforce laws. Our joint goal is to enhance the civil law enforcement capacity of moderate income persons and the lawyers who represent them. The Attorney General's Office is counsel for the State's administrative agencies, many of which adjudicate disputes between moderate income Marylanders and State government or otherwise enforce State laws, rules, regulations and policies. In these capacities, and as the trusted advisor of state and local governments, the Attorney General is in a unique position to identify access to justice barriers that moderate income persons face and to recommend appropriate reforms. We encourage the Attorney General to undertake the important access to justice tasks that we have proposed, and we stand ready to work closely with the Attorney

General on these matters.³⁴

CONCLUSION

We reiterate that our proposals are preliminary and we encourage all interested persons to submit written comments by July 31st to:

Herbert S. Garten
Chair, Maryland Access To Justice Taskforce For Moderate Income Persons
c/o Maryland State Bar Association
520 W. Fayette Street
Baltimore, Maryland 21201

We will publish notice of the public hearing or hearings on this report that we intend to hold in late summer or early fall, 1996.

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³⁴ As Attorney General, and before that as a State Senator and Chair of the Senate Judicial Proceedings Committee, J. Joseph Curran, Jr. has been responsive to the access to justice problems of the poor and moderate income people. A very incomplete list of accomplishments includes then - Senator Curran's pivotal support for the legislation that created the State's Interest On Lawyers' Trust Accounts program, which funds indigent legal services programs, and his development, as Attorney General, of that Office's nationally distinctive pro bono legal services project for the poor. (Many assistant attorneys general, on their own time and with their own resources, provide free legal help to the poor.)

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Chairman of
MD. Moderate Income Access to Justice Task Force

TELEFAX NUMBER: 659-0543

FROM: Ruth Hodgson

TELEPHONE # 974-3395

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Preliminary report and
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