

# ACCESS TO JUSTICE CHAMPIONS

THE WSBA LOW BONO SECTION'S NEWSLETTER



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## KING COUNTY LAW LIBRARY (KCLL) HAS YOUR BACK

If you haven't visited the law library in a while, you may have missed out on all the great resources and services we've added recently to assist both you and your clients. Need a helping hand for yourself or a client? No worries, KCLL has your back.

PAGE 2

## ECONOMIC BENEFITS OF CLOSING THE JUSTICE GAP

There is a cost to lack of access to justice. This cost is not just borne by the unfortunate litigants who find themselves without access to legal aid, but to society in general.

PAGE 3

## TREASURER'S REPORT

As our 2021 fiscal year comes to a close this month, I wanted to highlight a few financial activities over this past year and share some of the Section's plans for FY 2022.

PAGE 6

## CHAIR'S NOTE

It seems to me this year has been a particularly challenging year to be a Section chair. Conducting all Section business remotely has been an interesting endeavor.

PAGE 6

## USING SLIDING SCALES IN YOUR PRACTICE

**Part 1: When price discrimination can work for you!** While sliding scale law firms (SSLFs) are a tremendously understudied model for delivering legal services, we believe sliding scale fees have the potential to bolster a firm's bottom line, reduce costs, and allow practitioners to enjoy more of the intrinsic value of legal practice.

PAGE 7

## UPCOMING EVENTS

See what's happening next.

PAGE 8



**Low Bono Section**

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association or its officers or agents.

# KING COUNTY LAW LIBRARY (KCLL) HAS YOUR BACK

BY BARBARA ENGSTROM, JD

## Legal Research from Home

If you haven't visited the law library in a while, you may have missed out on all the great resources and services we've added recently to assist both you and your clients. Need a helping hand for yourself or a client? No worries, KCLL has your back.

## Check Out Our Remote Databases

KCLL subscribers can access e-books from Lexis Digital. Our Lexis Digital library has an excellent collection of general treatises

Consumer Law Center. We also have remote access to Hein Online for law reviews and state and federal legislative research and Nolo Press for self-help materials. To find out more about our remote database access visit <https://kcll.org/remote-databases/>.

## Unbundling? Point Your Clients Our Way

Do you have an unbundled practice? We have resources that can help bridge the gap between what the client will be working on

important to gather in advance of starting the estate planning process. We can also help patrons find other self-help resources such as subject-area materials written for non-attorneys, and court forms and instructions.

## What to Expect When ... and How to ... Video Series

Court rules and procedures are confusing in the best of times. Since the start of the pandemic, they are in a seemingly constant state of flux. To help people navigate the "new normal" we've been creating short, easy to understand videos where attorneys and experts explain What to Expect When ... and How to ... for the new procedures. A sampling:

- "What to Expect When ... Filing an Ex Parte Motion"
- "What to Expect When ... Appearing for a Family Law Hearing"
- "What to Expect When ... Using the Family Law Settlement Conference Program"
- "How to ... Schedule a Family Law Hearing"
- "How to ... Note an Ex Parte Motion"
- "How to ... Complete Your Submission List"



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along with a fantastic selection of Washington practitioner resources including the WSBA Deskbooks, the Washington Lawyers Practice Manual, and all the Lexis Washington Practice Guides.

For non-subscribers we have remote access to e-books via Cheetah and the National

and the services you will provide. The Nolo Press books are a great place to send clients to get them up to speed with a topic. For example, if you are working with a client on estate planning, having them look at the Nolo book *Get It Together* will help them to understand the information and documents

In addition to the What to Expect When ... and How to ... videos we also have an array of other videos designed to help *pro se* parties understand the basics of court rules and civil procedure. To find out more visit <https://kcll.org/videos/>.

## KING COUNTY LAW LIBRARY (KCLL) HAS YOUR BACK - cont'd

### Premium Westlaw Access In-Library

While the WSBA's free access to Fastcase is great, sometimes you just need a little extra legal research fire power. Not to worry, KCLL has in-house access to premium Westlaw content. We have all state and federal case law, jury verdicts, KeyCite, law reviews, and the full treatise collection.

### Subscribing – Best Deal in Town

The KCLL law library subscriber program pretty much pays for itself. The \$100 yearly fee affords subscribers remote access to tens of thousands of dollars of legal research materials via the Lexis Digital e-books access. In addition, subscribers receive five free document deliveries per month. This is a \$175 monthly savings over non-subscriber document delivery charges.

Feeling swamped? Not enough time? Our Let Us Do Your

Research service allows our attorney subscribers to enlist the research support of our skilled reference staff.

We will provide a research memorandum including references to applicable law and resources. Research services are billed at a rate of \$100 per hour, in 15-minute increments. We have lots of repeat customers who let us know how much they appreciate this service. There are many other benefits of subscribing. To find out more visit <https://kcll.org/services/subscribe/>.

### Join the Fun!

The King County Law Library is always striving to move the Access to Justice ball forward with dynamic new projects. Our attorney volunteers have partnered with us to produce resources like the Self-Represented Litigant Workshop series (which won the 2019 American Association of Law Libraries Excellence in Community

Engagement Award) and the What to Expect When... and How to... video series. If you would like to work on these ongoing projects or have ideas for new projects, we want to hear from you! To volunteer as an outreach partner in any capacity, please contact our Outreach Services Librarian, Ross Zimmerman, at (206) 477-1305.



*Barbara Engstrom is the Executive Director of the King County Law Library and an adjunct professor at Seattle University School of Law. Barbara and the team at the King County Law Library have created many innovative tools to assist self-represented litigants, including the Self Represented Litigant Workshop series which won the American Law Library Association's Excellence in Community Engagement award in 2019.*



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## ECONOMIC BENEFITS OF CLOSING THE JUSTICE GAP

BY MARYA NOYES, LLLT, MBA

There is a cost to lack of access to justice. This cost is not just borne by the unfortunate litigants who find themselves without access to legal aid, but to society in general. In economics this cost is referred to as deadweight loss, or the cost to society created by market inefficiency. Inefficient markets result in costs to buyers, sellers,

and society. Consequently, it would follow that buyers, sellers, and all of society would benefit from correcting the market inefficiency. When I first wrote an article on deadweight loss, it was just a theory based on years of training in economics. Studies such as the September 2019 report published jointly by the World Bank

International and International Bar Association (IBA) have shown that increasing legal aid can lead to significant government savings, greater efficiency in the justice system, and increased economic productivity. The report clearly demonstrates improving legal aid services is as important for economic growth as providing

## ECONOMIC BENEFITS OF CLOSING THE JUSTICE GAP - cont'd

functioning hospitals, schools, and roads.<sup>1</sup> In other words, resolving the justice gap or reducing market inefficiency leads to an overall societal benefit.

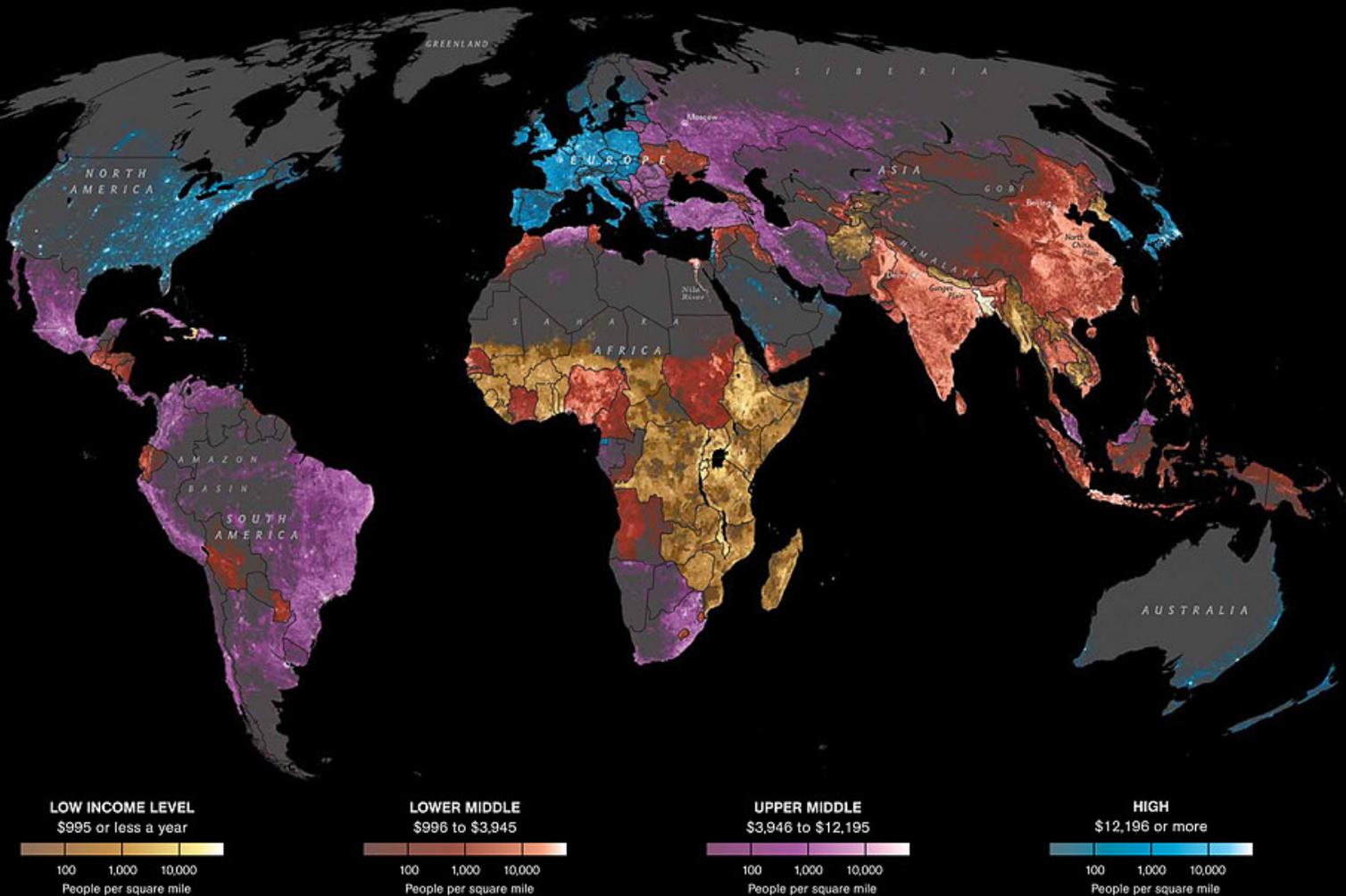
If you are out of melatonin and looking for ways to get to sleep, I highly recommend you read the World Bank's 2019 report. The report analyzes over 50 cost-benefit studies of legal aid and related services in a range of countries and jurisdictions across the world. Shockingly, it is estimated approximately 5.1 billion people in the world lack meaningful access to

justice. This number equates to over two thirds of the world's population. Given the fact Washington is ranked 9th among the states in per capita personal income, one might assume the citizens of Washington have greater access to justice than those of Bangladesh or Liberia. However, before you start congratulating yourself on the terrific job Washington has done in this area, you might take a minute and remind yourself of the updated civil needs study conducted by the Supreme Court of Washington in 2015.<sup>2</sup> This study found that more than three quarters (76 percent)

of low-income people with a legal problem in Washington do not get the help they need.

The combination of a high rate of lack of access to justice and high level of per capita income in Washington is more than likely explained by the fact that Washingtonians also have one of the highest rates of income disparity in the nation. Although a small percentage of our population make a remarkably high level of income, the average income for most of our citizens (99 percent) is under \$57,100 per year.<sup>3</sup>

"Via National Geographic: The World's Population Mapped by Income and Density" by JoeInSouthernCA licensed under CC BY-ND 2.0



## ECONOMIC BENEFITS OF CLOSING THE JUSTICE GAP - cont'd

Further, the legal field in our country has a bad case of Baumol's Cost Disease<sup>4</sup>, wherein costs for legal services have continued to increase without a corresponding increase in productivity. The increase in cost has consequently pushed access to legal services out of reach for the majority of our state's citizenry.

Now despite appearances, I assure you I did not write this article to lay another bleak picture of desperation of legal need before you. I wrote this article to share the fact that providing access to justice is not just morally right, it is also a very worthwhile economic investment.

If the legal service profession behaved like any other industry, service providers would have long ago engaged in pricing discrimination to capture the business of the consumers not being served by the current business model. Service providers would have created a flexible pricing structure to capture unmet consumer demand while simultaneously providing additional

income for legal firms. At present, over 76 percent (!!!) of low- and medium-income people with a legal need are not getting the help they need. Frankly, it is hard to fathom any other industry ignoring such a tremendous amount of income potential.

According to the World Bank's report, it turns that not only would it be potentially profitable to provide legal services to a wider economic spectrum of people, but it is also overwhelmingly beneficial for society.<sup>1</sup> Without legal aid, costs of the justice gap are borne by other areas of the public sector less equipped to resolve the cause of the problem. For example, a study in Wisconsin found that each prevented incident of domestic violence saved \$3,201 per year in avoided medical care, mental health care, lost productivity, and property damage.<sup>1</sup>

Another study from Kentucky found that every \$1 spent on obtaining a protective order saved \$32 in avoided costs for society.<sup>1</sup> As the World Bank's report so aptly states, lack of access to justice traps people in vicious cycles of poverty, inequality, and marginalization. Further, the burden of the justice gap falls disproportionately on women, children, minorities, and people with a disability.<sup>1</sup> Therefore, closing the justice gap would provide economic aid directly to these particularly vulnerable populations.

Our state pays a substantial price for the justice gap in the form of increased costs for law enforcement,

child services, and health care, and an inefficient court system. According to the cost benefit analysis presented in the World Bank's report, targeted investment in legal aid would not only benefit the legal services industry, it would also benefit vulnerable populations and society as a whole.

<sup>1</sup> The World Bank. (September 2019) "A Tool for Justice - The Cost Benefit Analysis of Legal Aid." <http://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>.

<sup>2</sup> Washington State Supreme Court (October 2015) 2015 Washington State Civil Legal Needs Study Update. [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).

<sup>3</sup> Estelle Sommeiller and Mark Price, Economic Policy Institute (July 19, 2018), "The New Gilded Age - Income inequality in the U.S. by state, metropolitan area, and county." <https://www.epi.org/publication/the-new-gilded-age-income-inequality-in-the-u-s-by-state-metropolitan-area-and-county/#epi-toc-10>.

<sup>4</sup> [www.legalevolution.org/2020/07/weve-got-a-bad-case-of-baumols-cost-disease-184/](http://www.legalevolution.org/2020/07/weve-got-a-bad-case-of-baumols-cost-disease-184/).



*Marya Noyes is a LLLT practicing family law at Genesis Law Firm in Everett. She was licensed as a LLLT in 2017, and earned her MBA at Seattle University in 2019. Marya regularly writes articles on economic analysis and market opportunities presented by addressing the justice gap.*



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## CHAIR'S NOTE - continued

issues like increasing membership, planning meetings, and setting goals. Zoom made it possible for us to continue to connect and share, though I think many of us missed being able to socialize in person.

As chair, I have participated in as many of these meetings as my schedule allowed. It was great to meet other section leaders and discuss ways to grow our sections and continue to deliver valuable member benefits.

The Low Bono Section's Executive Committee meets monthly on the third Tuesday to discuss many of these same topics. We transitioned—as did countless organizations—to virtual meetings, and have been able to have lively and robust discussions over Zoom.

We publicly commented on legislation and proposed court rule changes, which were some firsts for the Low Bono Section.

On September 30, 2021, I pass the chairship over to Sart Rowe. I know Sart will do a tremendous job in leading our Section, and I invite you all to come to our next Executive Committee meeting on October 19, 2021.

I appreciated and enjoyed the opportunity to serve as chair, and look forward to the coming year.



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## USING SLIDING SCALES IN YOUR PRACTICE

BY SARAH BOVE, LLLT AND JENNIFER ORTEGA, LLLT

### Part 1: When price discrimination can work for you!

While sliding scale law firms (SSLFs) are a tremendously understudied model for delivering legal services, we believe sliding scale fees have the potential to bolster a firm's bottom line, reduce costs, and allow practitioners to enjoy more of the intrinsic value of legal practice.<sup>1</sup> In this multi-part series, we will explore the history of the sliding scale, discuss some

practical implications of this fee model, and share our experience as an SSLF.

### History of the Sliding Scale

Simply defined, a sliding-scale structure sets a variable fee based on a client's ability to pay for a service in what economists consider a degree of price discrimination. A common example of price discrimination is charging senior, adult, and child rates for the same

seat at the movie theatre. There is no set way to incorporate the use of a sliding scale in your practice, and the benefits and costs of doing so can be complex.

Where did it begin? When trying to balance self-interest and service, only one other profession similarly wrestles with this crisis of professionalism—medicine. And that is just where the sliding scale originated. At various points in

## USING SLIDING SCALES IN YOUR PRACTICE - continued

European history, the law restricted a doctor (and barristers too) from billing for their services or suing to collect fees in an effort to protect health services for both the affluent and less financially fortunate. This rebuff of the commercialization of medicine, however, did not follow the English to the American colonies. American laws embraced the selling of medical services, but American doctors acted differently in a crucial way.<sup>2</sup>

Driven by the economics of medical practice before the spread of health insurance, doctors charged patients according to what they thought each patient could afford.<sup>3</sup> Thus, sliding scales were used widely by American doctors for decades. The death knell for sliding scale use for most medical practices was the widespread adoption of health insurance.<sup>4</sup>

In an article for *New York University Journal of Legislation and Public Policy*, Associate Clinical Professor at University of Michigan Law School Mitch calls the current health insurance scheme a “perverse new sliding scale” which burdens the least financially fortunate with the highest medical rates.

As many of us are aware, insurance companies bargain with doctors and hospitals for the lowest rates, and doctors and “(especially) hospitals” try to reduce that loss by charging uninsured patients the difference through higher prices. Nationally, insurers pay hospitals only about 40 percent of their listed charges.<sup>5</sup> This results in the average uninsured patient paying 250 percent more than their insured neighbors.<sup>6</sup>

Many may see legal insurance as a valuable answer to the rising costs of legal help, but if the health insurance industry is any indication, legal insurance may very well only exacerbate the justice gap. Unless and until legal insurance becomes widespread, we will not know if sliding scale usage will follow the same route as in the medical profession. In the meantime, use of a sliding scale may be a practical and profitable consideration for your practice. How, you ask? Stay tuned for Part 2 in this series, coming in our December edition!

<sup>1</sup> Mitch, “Tipping the Scales of Justice: The Role of the Nonprofit Sliding Scale Law Firm in the Delivery of Legal Services.” 20 NYU J. of Legs & Pub. Pol’y 375 (2017). [*Editor’s note: Author goes by one name only “Mitch”*]

<sup>2</sup> Id.

<sup>3</sup> [www.ncbi.nlm.nih.gov/pmc/articles/PMC2517971/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2517971/).

<sup>4</sup> Camb Q Health Ethics. 2007 Fall; 16(4):387-97; discussion 439-42.

<sup>5</sup> Reinhardt UE. *The pricing of U.S. hospital services: chaos behind a veil of secrecy*. Health Aff (Millwood). 2006; 25:57-69.

<sup>6</sup> [www.ncbi.nlm.nih.gov/pmc/articles/PMC2517971/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2517971/).



“A doctor performs an operation” by World Bank Photo Collection licensed under CC BY-NC-ND 2.0



Sarah Bove is a managing partner at Legal Technician Division, PLLC. Her practice is focused on helping clients navigate the legal system in a holistic, thoughtful, and affordable manner.



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## UPCOMING EVENTS

### Executive Committee Monthly Meeting

Section members are encouraged to attend any Executive Committee meeting! Click on or dial in and learn more about what's happening with our Section.

October 19, 2021

Regular meeting: 4:00 - 5:30 p.m., virtual happy hour: 5:30 - 6:30 p.m.

November 16, 2021

Regular meeting: 4:00 - 5:30 p.m., happy hour (possibly in-person!): 5:30 - 6:30 p.m.

December 21, 2021

Regular meeting: 4:00 - 5:30 p.m., happy hour (possibly in-person!): 5:30 - 6:30 p.m.

*The Low Bono Section is committed to justice for all and invites participation by everyone involved in serving moderate-income individuals.*

**Join our section!**  
Visit <https://wsba.org/legal-community/sections/low-bono-section>.

### Hopefully coming soon - in-person meeting and social!

We are keeping our eye on guidelines for in-person Section meetings, and once it becomes clear an in-person meeting will be possible, we will announce it on our list serve. Join our list serve by going to groups.io, search for LowBonoWA, then follow the instructions to request access to the list serve. Hope to see you soon!