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Guest Essay

What's Wrong With Getting a Little Free Legal Advice?

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Credit...Liam Eisenberg

By Bruce A. Green and David Udell

When the United States was founded, friends and neighbors could freely advise one another how to deal with legal problems. Anyone could give advice about the law or draft legal documents for others. One had to be a lawyer to advocate before certain courts, but that was all that lawyers had an exclusive right to do.

New York's highest court launched a significant change in 1919 when it declared that the practice of law, reserved exclusively for lawyers, included legal assistance provided for a fee outside the courthouse. The court noted that one "probably" could "ask a friend or neighbor" for legal help, but courts have since expanded lawyers' monopoly so that laws across the country restrict anyone who is not a lawyer from helping another person with a legal problem.

These laws prohibiting the "unauthorized practice of law" hurt those who cannot afford a lawyer. Even those who have relevant training or personal experience but are not lawyers may not offer free advice on how to handle a common legal problem. They cannot advise, for example, how to use legal processes to pursue the return of a security deposit, obtain overtime or a payment for child support, or prove that a debt was repaid.

A civil rights lawsuit pending in New York in the United States Court of Appeals for the Second Circuit, [Upsolve v. James](#), provides a prime example of the broad sweep of these laws.

Brought by the nonprofit organization Upsolve and the Rev. John Udo-Okon, a pastor in the South Bronx, the case focuses on debt collection lawsuits. Hundreds of thousands are filed annually in New York State, and millions more across the country. Many people sued in these cases cannot afford a lawyer. With help, many could defend themselves by explaining, for example, that the wrong person was sued, the wrong amount was sought, the wrong creditor claimed to own the debt, the lawsuit was filed too late and the like. But most people do not respond to the suits, allowing creditors to obtain default judgments and then garnish people's wages and seize their assets.

Mr. Udo-Okon wants to help members of his congregation sued in debt collection cases, and he has received training from Upsolve, a civil rights group focused on helping low-income New Yorkers respond to debt collection lawsuits, to help him do this well. More than 100 community residents have said they would want his free legal help. If permitted, he would download a fill-in-the-blank form from the New York courts' website, then explain to people how to complete and file the form. That's all. But even this would violate the state's unauthorized practice bans.

States should ease up on these restrictions.

A Federal District Court judge [found](#) last year that the unauthorized practice prohibition likely infringes on Mr. Udo-Okon's First Amendment freedom of speech, and authorized him to begin helping people while the case is on appeal. The order applies only to the plaintiffs in this case, but if the Court of Appeals upholds it and endorses the district judge's analysis, groups such as Upsolve can explore other ways to train people to take on their low-income communities' vast

unmet legal needs. (We wrote [amicus briefs](#) in support of the plaintiffs on behalf of the [National Center for Access to Justice](#).)

Many would agree that the Constitution should give everyone the right to give and receive free advice about life's challenges, including legal problems. The Constitution requires that laws censoring speech must be narrowly tailored to serve a compelling purpose. States can protect people from bad or fraudulent advice, but not by forbidding everyone but a lawyer from helping others in their community with their legal problems. That goes too far, because people who do not have a lawyer can benefit from free advice about common legal problems from someone with training or experience they know and trust, even if that person is not a lawyer.

New York's attorney general, Letitia James, argues in part that this is not a freedom-of-speech issue at all because Mr. Udo-Okon would primarily be engaging in conduct, not speech. She asserts that, given Upsolve's training, he would be applying "legal knowledge, judgment and skill to the facts" of an individual's legal problem. That, she says, is the "practice of law," not speech, even though he would not charge money, nor pose as a lawyer, nor advocate for anyone in or outside of court.

When legal assistance requires highly specialized skills and knowledge, it becomes increasingly legitimate for the state to insist that only a lawyer provide it — for example, representing a client in a courtroom where one needs to know particularly complex procedural and evidentiary rules and other law, or drafting certain legal documents without a reliable model.

But it is unreasonable for states to forbid people to apply a modicum of legal knowledge, judgment and skill to their neighbors' legal problems. Mr. Udo-Okon is not the only one impeded from helping the community in reasonable ways. So are social workers, librarians and teachers. But for the unauthorized practice restrictions, they, too, could learn how to assist people in low-income communities who have simple legal problems and no meaningful access to lawyers.

The broad-reaching laws barring the unauthorized practice of law impose too high a cost on those who can least shoulder it. The New York attorney general urges Mr. Udo-Okon to refer those who seek his help to a lawyer. But even with more government-funded legal aid lawyers and volunteer private lawyers, all of whom provide valuable services, there will never be enough free lawyers for the basic legal problems people need help navigating. Besides, his neighbors might prefer to get free advice from a community member they know and trust than from a unfamiliar lawyer.

In some jurisdictions, there are exceptions to these restrictions, and the public would benefit from more of them. In administrative proceedings, parties seeking federal benefits may be assisted by others who are not lawyers, whether they are professionals such as social workers or knowledgeable friends. In some states, certified paraprofessionals may offer certain legal services — for example, preparing legal documents in Arizona, defending tenants from eviction in Delaware and assisting in family court matters in Washington State.

In Utah, the state's Supreme Court established an Office of Legal Services Innovation to oversee experimenting with the delivery of legal services, including by individuals other than lawyers, in nontraditional ways. And in a similar spirit of experimentation, a court-appointed working group in New York [recommended](#) allowing social workers to offer some legal services, such as help in completing court-approved forms. But New York authorities failed to respond to the recommendation, prompting Upsolve's initiative.

The unauthorized practice prohibitions should not stand in the way of those seeking help with common legal problems from others in their communities who can capably provide it. People facing life's many legal challenges should be able to turn to those they trust for free advice.

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