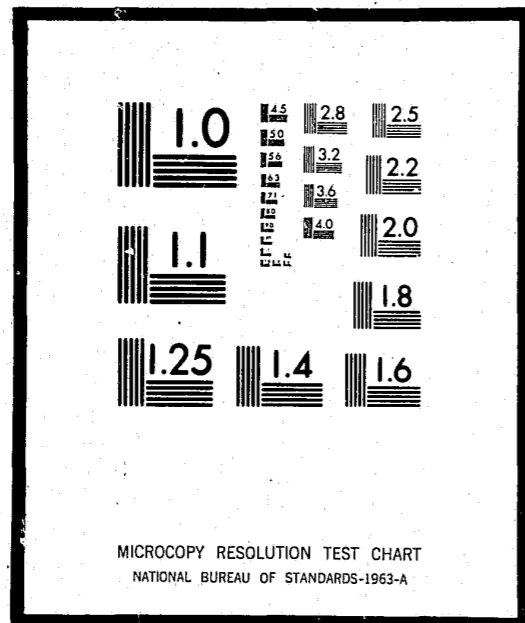


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Special Report

National Association of Attorneys General / COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL

February, 1974

USE OF PARALEGAL PERSONNEL IN ATTORNEYS GENERAL'S OFFICES

TABLE OF CONTENTS

Introduction	1
Who are Paralegals?	1
How Have Paralegals Been Used?	2
How Can Paralegals be Used?	5
Who Can be a Paralegal?	6
How Should Paralegals be Recruited and Trained?	7
What Has Been the Reaction to the Use of Paralegals?	8
Footnotes	10
Appendix: Institutions Offering Legal Assistant Programs	A-1

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Ted W. Zelman, Research Associate on the COAG staff, was primarily responsible for compilation of this report.

Introduction

There has been a marked increase in the use of paraprofessionals to increase efficiency and delivery of services. Dental and medical technicians are familiar examples of this trend. Teachers' aides are another example. The legal profession has lagged behind others in using paraprofessionals. This report is an attempt briefly to outline potential uses of legal paraprofessionals in Attorneys General's offices.

Who are Paralegals?

Attorneys have bar associations, and other professions have corresponding organizations, to certify competence. A number of occupations and professions are licensed by the state. Some paraprofessional groups, like dental hygienists, are certified, in this manner.¹ There is no universal certification procedure for paralegals. There is thus no fixed definition of paralegals. An exceptionally skilled secretary who performs calendaring or docketing functions and composes routinized correspondence is an example of one type of paralegal. An investigator who interviews clients and investigates complaints is another example of a paralegal. A trained ex-convict who provides in situ legal assistance to penitentiary inmates might be considered a paralegal.

The American Bar Association has recognized the need for paralegals and has encouraged their training and employment. A Special Committee on Lay Assistants was created in 1968. The ethical considerations of using paralegals has been considered by the ABA's Standing Committee on Professional Ethics. Its Opinion 316 states:

A lawyer can employ lay-secretaries, lay-investigators, lay researchers, accountants, lay-scrivens, non-lawyer draftsmen or non-lawyer researchers. In fact, he may employ non-lawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court, or appear in formal proceedings as part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client.

Many people have attempted to define paralegals. Since this is usually done within the context of a report concerning some group of paralegals, it reflects a specific point of view. Here is one definition which appears in a training manual for paralegals:

A paralegal is a person skilled in providing legal services. He is not a lawyer, but he undertakes tasks that have been traditionally performed by lawyers...The paralegal is authorized to perform a number of significant activities connected with the delivery of legal services...The paralegal is a technician who works on complex human and legal problems. He will normally work under the supervision of a lawyer and be in a position to consult with or refer special problems to a lawyer.²

Another author chose to define paralegals by describing the situations which have occasioned their need:

The current shortage in the availability of legal services, which is especially acute for the poor and even for the middle class, has been attributed to the greater demand for legal services occasioned by new concepts of the right to counsel in civil and criminal cases; the increased complexity and organization of society (causing legal needs to grow faster than population); and the increased impact of the governmental administrative apparatus...For the system to become more efficacious, there must be an increased number of providers (lawyers and their assistants) or a more efficient utilization of present resources.³

The paralegal is thus a skilled, trained, lay assistant who works with a lawyer in a legal-related job capacity.

Paralegals can be divided into two categories. First, there are those who perform existing services. Their work serves to make more efficient use of present legal resources. A paralegal who prepares routine correspondence or who interviews clients to obtain needed information serves this function. Characteristically, this type of paralegal works closely with attorneys. Even where supervision by attorneys is rare and irregular, the paralegal is still performing tasks aimed at improving attorney efficiency.

The second category of paralegals consists of those who perform function not previously provided. Thus, use of paralegals in correctional settings or as consumer protection investigators usually means an additional delivery of services. Because of the nature of the work involved, these paralegals may be located at great distances from supervising attorneys. Although their supervision may be comparable to those paralegals who work in law offices, the work of these paralegals is different; it is directly in support of attorneys. Often, it is "preventive law" which may minimize needs for formal legal services.

The ambiguous definition of the paralegal field emphasizes the need to classify jobs by function. One who performs paralegal functions is a paralegal, regardless of job title. Under this guideline, most Attorneys General's offices can be said to employ paralegals. Some relatively common positions in Attorneys General's offices are investigators in the workmen's compensation, consumer protection or environmental areas. It is reasonable to expect that, as an investigator becomes more experienced, he will perform more and more functions in an area which previously had only been performed by attorneys.

How have Paralegals been Used?

One paralegal group consists of trained, skilled secretaries. The (Seattle) King County Prosecutor's Office is an example of efficient use of office resources. "Fifty-one standard pleadings, motions and orders are on tapes, as well as 19 form letters."⁴

Typing has been routinized such that attorneys can write correspondence and court papers out of a virtual cookbook. This allows attorneys to develop appropriate forms for all papers which can be expected to be used more than once. Thus, office precedents can be used as a resources. Some secretaries have been transformed into Legal Assistants, who "perform a wide variety of tasks, many of which require a rather high degree of discretion, for the attorneys."⁵

Among these tasks are: determining the method with which a subpoena will be served; responsibilities in keeping track of witness fees; calendar availability; conference logistics; and compiling reports on prospective juror lists, sentencing recommendations, appeal recommendations and other routine legal papers.

Attorneys General's offices often use consumer protection specialist paralegals to investigate complaints, determine appropriate actions, and prepare routinized correspondence. The New Jersey Division of Consumer Affairs uses some one hundred and fifteen Consumer Affairs Local Assistance Officers. These are specially trained officers certified by regularly-scheduled Division training programs. The training sessions are one day a week, for three weeks. They cover procedures, simulated cases, and regulations concerning specific problem areas. In addition, the Consumer Affairs Division's relation to other agencies is explained.⁶

The Criminal Division of the Georgia Department of Law presently uses two paralegals as Legal Specialist Assistants in habeas corpus litigation. Standard procedures for handling this litigation have been developed. The cases are generally submitted by mail. The divisional senior secretary prepares a file for each case, assigning a number and filling out an informational form. The case is assigned to a division attorney, and delivered to a Legal Specialist Assistant. The procedures for the Specialist are described below.

The Specialist will proceed to analyze the petition. The Specialist will determine whether under Ga. Code Ann. 50-127 the response date is to be established in those cases where the court has not by order set such a date. If such a response is required, the date will be transmitted to the Divisional Central Calendar for entry upon the Day-Tickler section. If a hearing date has been set less than 20 days from the date of service upon the Attorney General of the papers in question, the Specialist will order the preparation of a motion for continuance based upon the statutory provisions. The preparation of such a document will be noted on the control slip in the remarks section. The file will then be delivered by the Specialist to the designated handling attorney.⁷

The attorney reviews and revises the Specialist's analysis. However, as the Specialist gains more expertise, little review and revision is necessary.

The two paralegals used in Georgia are representative of highly skilled paraprofessionals. Both have post-graduate training and work experience. One was a social worker, the other graduated from law school and worked in a law office, but has not passed the bar. The skills necessary to their jobs are investigating, analyzing and dealing with people. Their work is considered invaluable to the efficient performance of the Criminal Division.⁸

The Administrator for the Wisconsin Department of Justice notes that four civil investigators function as paralegals. One works in workmen's compensation, two in consumer protection, and one in environmental affairs.⁹

The Federal Trade Commission first developed paralegal positions in 1972, when the position of Research Assistant was created in the Office of Policy Planning. As of September 1973, there was ten paralegal positions in the FTC. The Director of Personnel for the Federal Trade Commission has defined the paralegal position as one directly supportive of the professional legal work in the national office. The duties include:

- organizing and describing documents and exhibits
- identifying and researching relevant sources
- fact-finding investigations and interviews
- preparing abstracts and written reports on research findings
- preparing initial drafts of legal memoranda, complaints, motions, briefs and other legal documents.¹⁰

The Federal Trade Commission's program includes one of the most potent paralegal incentives: opportunities for advancement within a specialized field. There are positions at the GS-7, GS-9 and GS-11 levels. The U.S. Civil Service Commission also has a Consumer Protection Specialist position description at the relatively advanced level of GS-12. Following are excerpts from the description involving some complex and specialized skills.

Serves as a team leader or an individual worker handling broad, complex, or sensitive assignments. Receives broad assignments usually stated in terms of the problem to be solved or the types of alleged violations or unfair practices to be investigated... The incumbent plans and executes the investigation or project. ...Although he may be assigned for extended periods (3-6 months) to a particular area, such as consumer credit, he is called upon from time to time to investigate alleged violations of any consumer statutes or FTC trade regulations. ...Incumbent secures evidence, obtains statements of witnesses, prepares affidavits, writes factual reports and recommends the action which should be taken (insofar as such recommendations do not involve an analysis of legal issues). ...The incumbent is expected to plan and carry out investigations and consumer education activities with a minimum of supervision, usually making progress reports and a final report. ...He is expected to have a sound knowledge of the laws referred to, investigational techniques, educational techniques, the media in his region or area, and the problems faced by consumers in his region.¹¹

Previous Committee on the Office of Attorney General reports have noted the employment of paralegals in Attorneys General's offices. The Office of Attorney General: Organization, Budget, Salaries, Staff and Opinions, published in October, 1973, provided information supplied by Attorneys General concerning their use of non-legal staff. Twelve jurisdictions reported employing an administrative assistant, aide or officer. Six more relatively populous states reported employing a large number of administrative personnel. For example, Pennsylvania reported that the Attorney General's office employs 139 administrative and legal support personnel. Oregon reported that it employs 16 full-time and 9 part-time paraprofessionals.

Three states specifically responded that they employ one or more paralegals. Nearly all states employ investigators; many of these positions probably include some responsibilities bordering on legal services. The number of states utilizing administrative personnel, and the number of such personnel represents an increasing emphasis on administration in the offices of Attorneys General.¹²

The Office of Economic Opportunity is another federal agency which has infused paralegals into the legal services delivery system. OEO has concentrated on using paralegals as lay advocates, providing assistance in areas of personal experience. OEO has funded programs in legal aid, health care, senior citizens' assistance, and prevention of juvenile crime. In each instance, the paralegals are situated in the clients area, and the emphasis is on locating and training members of a disadvantaged group to assist neighbors. In some instances, the paralegal works as part of a services team. This is an example in which "the programs exist in response to unfulfilled needs for lawyering services -- services that simply would not have been provided but for lay advocates."¹³

How Can Paralegals be Used?

Effective use of paralegals requires analyzing job functions to determine which tasks can be performed by someone with less training than is required of a lawyer. Few large law offices function with attorneys performing all non-clerical tasks. Paralegals are often used as part of a larger effort to increase office efficiency. Paralegals are not effectively used only as a response to extreme needs.

H. Lee Turner is a partner in a Kansas law firm which uses twenty-five paralegals to augment the work of four attorneys. Mr. Turner was Chairman of the American Bar Association's Special Committee on Legal Assistants. He is a pioneer in the use of paralegals in increasing law office efficiency. In a speech to a COAG Management Institute, he described how office procedures were developed for the utilization of paralegals.

We conducted a random review of closed legal files. We found amazing similarities between work product from file to file. Collate the pleadings, review correspondence, examine memos; soon you will find a pattern of repetitious behavior emerging.

For years I had been dictating, many times without reference to form books or other visual aids; always, however, on a piecework basis.¹⁴

In effect, by repeating his correspondence, Mr. Turner established standard approaches to many problems. What remained to be done was to issue all instructions as written memoranda. This served as the basis for standard training instructions and as a check for troublesome areas. "And with the evolution of written procedures, we broke through the costly lawyer piecework approach to volume lower-cost 20th Century methods."¹⁵

This experience shows that paralegals are capable of competently performing many law office functions. Among the tasks are calendaring, docket control, outgoing interrogatories, incoming interrogatories, scheduling depositions and appointments, medical appointments, preparation and maintenance of file briefs, and pretrial and trial scheduling responsibilities.

Constant and clear communications among all office members is central to effective paralegal use. Delegation of duty must also be clear. Whenever possible, procedures ought to be written. This diminishes disruptions caused by turnover.

Turnover is a fact of life. It must be faced and planned for. The work experience of a legal assistant is an investment of the lawyer's time. A written procedure can return to him 50 to 80 percent of his time invested even after the legal assistant is gone... We require assistants to assist in the development or revision of a procedure.¹⁶

Effective use of paralegals means that more legal services can be provided by the same number of attorneys. It means that attorneys can be freed from routinized tasks which do not tax their qualifications, to constantly changing and challenging assignments.

Who Can be a Paralegal?

The American Bar Association's Special Committee on Legal Assistants has said, "The Committee recognizes that an individual's ability to perform as a legal assistant may be evidenced in a number of ways including formal educational programs, on-the-job training and/or work experience and by the successful completion of an examination."¹⁷

Authorities agree that specialized training is essential to attain the career potential of paralegals. The issue of admission into training has been summarized by the Director of the National Paralegal Institute:

One approach to admission is represented by the Philadelphia Institute (for Paralegal Training). It seeks college graduates with the highest academic credentials. Opposed to this approach are some in the legal services movement who believe that the most effective paralegals for the poor will be those whose education and background are similar to the clients...In the end, the entrance qualifications of a paralegal will turn on the nature of the work done, and variety of functions will lead to diverse kinds of paralegals.¹⁸

The Philadelphia Institute is illustrative of one type of paralegal recruitment. These paralegals are college-educated and law-oriented. They often enter formal academic paralegal training before working in a legal setting. Many law offices prefer that their own employees evince interest in legal work before they enter special training. One lawyer notes that this selection method has certain advantages: it offers a continuing education; there are no internship placement problems; and there is a demonstrated student and employee interest.¹⁹

Paralegals may be recruited while still untrained and uneducated. Clients of legal services; such as ex-convicts can be recruited and trained. A principle involved in efficient use of paralegals is that, "no lawyer performs work that can be handled by a person less skilled than himself."²⁰

The present ambiguity in the paralegal field allows entry in varying ways. A student can concentrate his education on paralegal training. An employee or client can enter training to pursue career opportunities.

How Should Paralegals be Recruited and Trained?

Another question is whether paralegals should be recruited, and then trained, or vice versa? If they are trained before they are recruited, paralegals can lack sufficient work exposure to understand whether they really desire a legal services career. It also means that capable, committed persons who lack formal training may not be able to find access to the legal system. If work experience is required as a pre-requisite for choosing those to be trained, it is possible that persons with sufficient capabilities may not be attracted. It may also mean that paralegals may perform tasks for which they are not properly trained. On a large scale, for a long period of time, this means inefficiency. There is no definitive resolution to this question. Situational needs dictate how the supervising attorney decides to fill his staff.

In recruiting paralegals, several guidelines should be noted. First, particularly in areas in which a specific client group is to be served, recruiting might be done from the client group. Second, the paralegal should be recruited with an eye toward his advancement potential in the Attorney General's office. The pertinent question is: with the proper training, what is this person's potential in our office?

Many paralegal students are highly motivated secretaries desiring more specialized skills. One author has commented on how paralegal training meets their needs:

At the start of 1973, almost 2,000 students were enrolled in all the known (paralegal) programs...Between 80 and 90 percent of the students enrolled were women. Many were already employed in law related work and were seeking to upgrade their grasp of the law and their skills; a considerable number already employed as legal secretaries. The night classes and Saturday morning classes were especially attractive to these paralegal students.²¹

Specialized training is one of the foundations of paralegals as a profession. It can be derived from some in-house program or a specialized academic curriculum, or a combination of the two. But training is necessary. An appendix to this report is a listing of paralegal training programs as compiled by the American Bar Association. This can be used as a source for recruiting paralegals and for training them. The amount of training an Attorney General's office seeks for its paralegals ought to be determined by the tasks they are being trained for. The ABA's Special Committee on Legal Assistants has prepared a number of reports on use and training of paralegals in an attempt to develop some standardized training for specific skills.²²

There is presently no special accreditation of paralegal training programs. The ABA's Special Committee on Legal Assistants, has been studying this area. They are presently investigating and evaluating proper curriculum content for legal assistant training courses. They have recently compiled "Guidelines for the Approval of Legal Assistant Education Programs." Procedures for implementing evaluations of training courses are being prepared. It will be about six months before this occurs.²³

The guidelines mentioned above were approved on August 8, 1973, by the ABA's House of Delegates. The guidelines require at least 60 semester or 90 quarter hours, with three-quarters of these devoted to special education and law-related courses. The training must occur in an accredited or eligible institution.

It can be anticipated that eventually these guidelines will evolve into licensing standards. Should this occur, the ABA will be the organization exercising control over standards for both lawyers and their employees, paralegals. The potential danger of this situation is that because the ABA is principally representative of and responsive to lawyers, it will not be able to adequately serve paralegals. However, paralegals have been conceived to assist attorneys and it is inevitable that lawyers will be involved in major decisions concerning paralegals. California Assembly Bill 1814, endorsed by the California Bar Association, would establish the State Bar as the accrediting agency for training programs and licensing agency for paralegals. The National Paralegal Institute has opposed this bill. Some of their reasons are:

1. Formal accrediting procedures for paralegal training programs should not be processed until thorough experience and extensive studies can decide what training programs and methods of teaching are most effective.
2. Paralegals now are not practicing law and are doing only what laymen are authorized to do under a lawyer's supervision. In this capacity, paralegals represent no threat to the public interest and it is, therefore, unnecessary to create licensing regulations which require burdensome enforcement costs in the absence of a driving need for them.
3. It would be inappropriate to place exclusive control of the entire paralegal occupation in the hands of the Bar Association since a marked conflict of interest exists between attorneys and paralegals over such issues as paralegal salaries, status and role.²⁴

There is an association of paralegals which is developing a certification test for paralegals. The American Academy of Legal Assistants was formed in 1972. It presently has a growing membership of about one hundred and fifty. It has certified paralegals up until January, 1974, by allowing employers of working paralegals to vouch for their special skills. On June 11, 1974, the first certification test for paralegals will be administered by this group.²⁵

What has been the Reaction to the Use of Paralegals?

There is a strong potential friction between lawyers and paralegals. First, lawyers may treat paralegals as glorified secretaries. They may assign them clerical functions. Just as lawyers should not be performing functions which paralegals can, paralegals should not be doing work that secretaries can do.

Attorneys may also resent paralegals doing things previously handled only by lawyers. These problems require that attorneys who supervise paralegals receive some sort of training. They must understand what is expected of paralegals and how they can facilitate this being accomplished.

Another potential problem could result if paralegals are limited to college educated persons with special training. This would merely add a sub-lawyer layer of professional to the legal services field. It could cause the paralegal concept to be ossified in a structure which does not meet the demands of constantly growing legal service needs.

The preceding examples of paralegal-related problems are all relatively minor. Solutions can be effected by applying some forethought. Paralegals can be a boon to the Attorney General's office, so long as all parties concerned understand the purposes and intents of their use.

In most cases, law offices which use paralegals consider them an integral part of office operation. They liberate attorneys from many tasks that law training does not help to perform. They allow lawyers to handle more cases at a smaller per case cost. And because their expertise is specialized, they can be a resource to all office members due to their knowledge.

FOOTNOTES

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 LIBERATING THE LAWYER: THE UTILIZATION OF LEGAL ASSISTANTS BY LAW FIRMS IN THE UNITED STATES (June 1971);
 THE TRAINING AND USE OF LEGAL ASSISTANTS: A STATUS REPORT (1974).
23. Letter from Terry L. Kramer, Staff Director of Special Committee on Legal Assistants, to Ted Zelman, (January 28, 1974).
24. The National Paralegal Institute, Inc., Accrediting and Licensing of Paralegals, 7 Clearinghouse Review 475 (December 1973).
25. Telephone interview with James M. Amory, President, American Academy of Legal Assistants, (February 12, 1974).
26. William G. Haemmel, Supra note 21.

APPENDIX: INSTITUTIONS OFFERING LEGAL ASSISTANT PROGRAMS

The following Legal Assistant programs were compiled from a list published from the ABA's Special Committee on Legal Assistants and from an appendix to an article on paralegals.²⁶ Attorneys General's offices are encouraged to contact the Staff Director of the ABA's special committee for verification of the reliability of any program. His name is:

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William Rainey Harper College
Palatine, Illinois 60067
R. Duane Slayton

MacCormac Junior College
327 South LaSalle Street, Chicago, Illinois 60604

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Covington, KY 41011
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Willard R. Terry

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Lane Community College
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Michael A. Pastore

City College
403-405 Lyon Bldg.
Seattle, WA 98104

INSTITUTIONS TO BEGIN PROGRAMS IN 2nd HALF OF 1973

1. Metropolitan State College, Denver, Colorado
2. Morningside College, Sioux City, Iowa: Dr. Wm. Phillips
3. Rutgers, The State University, Newark, N.J.
4. Del Mar College, Corpus Christi, Texas
5. Virginia Community College, Richmond, Virginia
6. Central Carolina Technical Institute, Sanford, N.C.*
Tommy C. Mann, Institutional Development Officer

*No. 6 above began the paralegal program in September, 1973.

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