

Does “Public Interest Drift” Exacerbate the “Justice Gap”?

By ZACHARY NEWMAN* AND SALENA COPELAND†

Introduction

MANY ASPIRING LAWYERS ATTEND LAW SCHOOL because they want to engage in legal work to assist marginalized or disenfranchised communities. These individuals want to acquire the skills to support social justice and public interest efforts in the legal world. They may want to help prevent unjust evictions, support the rights of people with disabilities, secure protections for domestic violence survivors, fight for access to healthcare, defend consumers challenging illegitimate debt collections, or engage in the myriad of other civil matters that legal aid lawyers help with.¹ They may be motivated by an awareness that many people facing legal issues are unable to afford a lawyer to obtain counsel on how to navigate the complexities of the legal system and fight for their rights.²

Put simply, these social justice-minded law students want to go to law school to be public interest lawyers.³ They want to learn the law and develop

* Zachary Newman (he/him) is the Directing Attorney at the Legal Aid Association of California (LAAC), where he works on the Advocacy Team to secure more funding and better laws for legal aid. He graduated from the University of California College of the Law, San Francisco (UC Law SF) in 2016, focusing on public interest law, and the University of California, Santa Cruz in 2012, majoring in Politics.

† Salena Copeland (she/her) is the Executive Director of LAAC. She works closely with the legislature, the State Bar of California, and the Judicial Council of California on access-to-justice issues. She is a 2007 graduate of Stanford Law School and continues to be active in the public interest alumni community.

1. See generally *What Is Legal Aid?*, NAT’L LEGAL AID & DEF. ASS’N, <https://www.nlada.org/tools-and-technical-assistance/civil-legal-aid-resources/what-legal-aid> [<https://perma.cc/STD6-WXW8>].

2. See Rebecca Buckwalter-Poza, *Making Justice Equal*, CTR. FOR AM. PROGRESS (Dec. 8, 2016), <https://www.americanprogress.org/article/making-justice-equal/> [<https://perma.cc/A3SG-RU9V>].

3. By “public interest,” we mean the overarching field of work that seeks to serve or support people, causes, and communities that are disadvantaged in the legal system or are generally marginalized, underrepresented, or disadvantaged in society. “Legal aid” is a subset of public interest legal work, with legal aid referring specifically to the provision of free legal assistance to those at or below 200% of the poverty level (or qualify for another reason, such as disability, age, or veteran

a skill set to zealously defend and assist their clients who would likely otherwise go unrepresented. However, statistics show that this vision may not become a reality for many of these law students.⁴ Instead, for one or more of the reasons discussed below, a significant percentage of these students shift their career goals during law school and decide to pursue areas that offer higher pay or otherwise promise more financial security, which in turn includes the ability to pay off their law school debt. This phenomenon is called “public interest drift.”⁵

In this piece, we address the definition of public interest drift, its main drivers, and its potential solutions. We describe the relationship between public interest drift and issues around the recruitment and retention of law students and recent graduates in legal aid. We connect this to the “justice gap,” which refers to the mismatch between the demand for free legal help and the availability of such services, including the insufficient number of attorneys.⁶

Part I speaks to what public interest drift means and its key causes. Part II covers the implications of public interest drift in minimizing the justice gap. Part III provides potential solutions to prevent this drift.

I. What Is Public Interest Drift, and What Causes It?

Public interest drift occurs when a student enters law school intending to do public interest work following graduation but “drifts” from it to other areas of the law. Since the 1970s, academic studies on the topic have shown that many students enter law school with the objective of doing some kind of public interest work but change their minds prior to graduation.⁷ According to a recent State Bar of California survey of law students, twenty-two percent

status). Public interest law includes other nonprofits, as well as some government jobs, like public defenders. See generally *What is Public Interest Law?*, EQUALJUST. WORKS, https://www.equaljustice-works.org/wp-content/uploads/files/What_is_Public_Interest_Law.pdf [<https://perma.cc/DQA5-3TQR>].

4. See John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of “Public Interest Drift” in Law School*, U.C. DAVIS L. REV. 1973, 1975 (2018) (“[R]oughly half or more of the incoming law students who state a preference for working in the public-interest sector will take positions in private law firms upon graduation.”) (citing numerous studies showing that students at Harvard Law School, University of Denver Sturm College of Law, University of Wisconsin, and University of California, Davis reported diminished enthusiasm in public interest by graduation).

5. See KELLY CARMODY ET AL., JUSTICE AT RISK: MORE SUPPORT NEEDED FOR LEGAL AID ATTORNEYS IN CALIFORNIA ii, 103 (2020).

6. *The Justice Gap: Executive Summary*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/executive-summary/> [<https://perma.cc/26HG-HDZJJ>] (“The justice gap is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.”).

7. Bliss, *supra* note 4, at 1975 n.1.

of student respondents “started law school intending to work in a public interest job,” but just thirteen percent “remained interested in working a public interest job upon graduation at the time of the survey.”⁸ While most of the drift occurred by the second year of law school, it continued to increase in the third year, showing that drift becomes deeper as law school progresses.⁹

A. Drift Due to Law Student Debt

The main reason for public interest drift is debt. Seventy-one percent of students who drifted from public interest work cited the need for more financial security because of education-based loans.¹⁰ The average tuition at California’s law schools is perennially going up at a rate that “outpac[es] inflation by over 22 percent.”¹¹ From 2009 to 2019, tuition for state residents increased by nearly \$10,000 at public law schools and around \$13,000 at private law schools.¹² During law school, legitimate concerns of lower pay and high debt burdens channel people away from public interest work. By the time of graduation, law school debt averages around \$150,000 for those who went to private law schools and \$120,000 for those who attended public law schools.¹³ Furthermore, students of color tend to have significantly higher debt loads, making it even harder for those students to stick with public interest work.¹⁴ Finally, students who ultimately drifted in the Bar’s study had more debt than students who did not drift. Specifically, students with a median law school debt of \$140,000 drifted from public interest, while those

8. THE STATE BAR OF CAL., PUBLIC INTEREST DRIFT: FINDINGS FROM THE 2019 CALIFORNIA LAW STUDENT SURVEY 3–4 (2019) (this survey was developed in collaboration with the Legal Aid Association of California (LAAC). Other studies show similar numbers, that around “40 percent of students who begin law school with the intention of working in public interest change their mind by their third year, and fewer than one-quarter end up taking public interest jobs.”) [hereinafter PUB. INT. DRIFT]; *id.* at 1.

9. *Id.* at 4 fig.2.

10. *Id.* at 5.

11. *Id.* at 1.

12. *Law School Costs*, L. SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/trends/costs/tuition> [<https://perma.cc/H7VD-DEJH>].

13. PUB. INT. DRIFT, *supra* note 8, at 1.

14. *Id.* at 6; Erin L. Thompson, *Law Schools Are Failing Students of Color*, THE NATION (June 5, 2018), <https://www.thenation.com/article/archive/law-schools-failing-students-color/> [<https://perma.cc/3LFD-ERJD>]; see also Online Symposium, *The Racial Reckoning of Public Interest Law*, 12 CAL. L. REV. 1, 11 (2021).

[R]esearch suggests that ‘minority law students are more likely to begin law school with an initial commitment to public interest careers, but experience elevated levels of “identity dissonance” and alienation’ in law school that may cause them to choose other segments of the profession . . . [T]he goal of diversifying the public interest sector implicates how law schools socialize law students to pursue legal careers.

Id.

with a median debt of \$100,000 did not.¹⁵ It is imperative that any action to solve public interest drift take debt into account.

Beyond debt, there are other financial rationales for drifting. In the Bar's study, forty percent of students expressed a lack of confidence in the federal Public Service Loan Forgiveness (PSLF) program, which, at the time of the survey, had an abysmally low forgiveness rate of around one percent.¹⁶ Further, thirty-two percent of students planned "to pursue [a] public interest job after paying off their educational debt," twenty-eight percent of students planned to work in the private sector (likely because of higher pay), and twenty-seven percent of students simply "want or have to make more money" generally.¹⁷ What we see here is the critical function that debt—and pay—play in the mental calculus that all students go through when deciding on what is next for their career.

B. Drift Due to Concerns About Debt Forgiveness Programs

Critically, the problem of student debt relates to two main ways to alleviate this debt: the federal PSLF program and the Loan Repayment Assistance Programs (LRAPs). Students express a lack of trust in these programs' promises to support their ability to pay off their loans while working in a public interest career.¹⁸ According to the Bar's study, while sixty-eight percent of students who wanted to go into a public interest career "were aware of the PSLF," only twenty-seven percent "were aware of their law school's LRAP."¹⁹ Furthermore, law students interested in public interest rated PSLF and their law schools' LRAPs negatively, "expressed dissatisfaction with low income ceiling requirements, inadequate funding, overly complicated terms," and more.²⁰ This all combines into a multi-faceted problem: students do not know about these programs, and if they do, they do not really believe in them. If debt is critical, then so are these programs that, at their core, are supposed to help with debt—making them useful and reliable are paramount.

C. Drift Due to Lack of Support from Career Services Offices or Paid Summer Internships

Finally, law schools' career services offices may not provide as much

15. PUB. INT. DRIFT, *supra* note 8, at 6 fig. 4.

16. *Id.* at 5–7 ("PSLF processed its first cohort of applicants in 2017; as of June 30, 2019, only 1,216 out of 102,051 applications were approved by the U.S. Department of Education . . .").

17. *Id.* at 5.

18. *Id.* at 8.

19. *Id.* at 7–8.

20. *Id.* at 8.

support as they do for “Big Law” jobs when it comes to both summer internships and post-graduate jobs in public interest law.²¹ According to focus groups convened by the Legal Aid Association of California (LAAC) as part of our *Justice at Risk* report on legal aid recruitment and retention, students noted that public interest job support provided by career services offices was minimal or limited, especially when compared to the support they provided for offerings by law firms and private sector careers.²² While this may be true, those interested in public interest work still tended to use their career services offices over other ways to try to get a job—such as looking online or going to a public interest/public sector career day—and generally think positively about those services.²³ Ensuring law students interested in public interest careers get what they need from their law schools’ career services is crucial.

II. How Does Public Interest Drift Affect the Justice Gap?

At its core, public interest drift means not only that students change their career goals but also that there are fewer public interest lawyers graduating from law school. In turn, this means fewer lawyers are available to serve low-income and other marginalized communities. Increasing the number of legal aid lawyers is vital to strengthening the legal safety net and reducing the justice gap²⁴ because sixty percent of low-income people in California face at least one civil legal issue in a year, but they receive inadequate or no legal assistance for eighty-six percent of their legal issues.²⁵

In the face of inadequate legal support for marginalized and disenfranchised communities—and particularly communities of color—legal aid organizations are tasked with providing that primary safety net.²⁶ However, these legal aid offices are often under-resourced and understaffed, making it difficult for them to meet the demand for free legal services, and so many of those in need go unrepresented. Legal aid can adequately serve approximately thirty percent of the legal problems that clients bring to them in California.²⁷ The lack of resources and an insufficient supply of lawyers make it nearly impossible to improve these numbers. Thus, expanding access to these much-needed services and closing the justice gap requires passionate law school graduates to enter—and remain—in the public service field.

21. *See id.* at 8–9.

22. CARMODY ET AL., *supra* note 5, at 53.

23. PUB. INT. DRIFT, *supra* note 8, at 9 fig.6.

24. CARMODY ET AL., *supra* note 5, at 14.

25. THE STATE BAR OF CAL., THE CALIFORNIA JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF CALIFORNIANS 8, 12 (2019).

26. *See id.* at 6.

27. *Id.* at 45–46.

III. How We Can Mitigate Public Interest Drift and Support the Next Generation of Public Interest Lawyers?

The phenomenon of public interest drift is not unchangeable. There are substantive strategies to reduce the number of law students and lawyers straying from their original public interest goals. We know from the Bar's study that students are less likely to drift when they have lower law school debt, believe in debt assistance programs, and receive support in an internship with a public interest organization.²⁸

A. Reducing the Debt-to-Income Ratio

The increase in cost of a legal education has dramatically outpaced inflation.²⁹ In 2000, the “sticker price” at a private law school was nearly \$22,000.³⁰ As of 2023, tuition at a private law school averaged \$53,000.³¹ That's an increase of over 140%. Over the same period, inflation increased nearly seventy-eight percent.³² From 2010 to 2023, salaries for first-year associates at large firms rose from \$130,000 to around \$200,000,³³ while median entry-level salaries in legal aid went from \$46,000 in 2009³⁴ to just \$63,200 in 2022.³⁵ As mentioned earlier, students who drifted in the Bar's study had a median law school loan debt of \$140,000.³⁶ If those students entered public interest jobs, their earnings from the first two years would not equal their debt (they would have a debt-to-income ratio of 2.2). But, if they worked at a major firm, their first year of earnings would exceed their debt (they would have a debt-to-income ratio of 0.7). Thus, public interest lawyers' ability to repay student loan debt is dramatically lower than that of their

28. See CARMODY ET AL., *supra* note 5, at 79, 82.

29. See L. SCH. TRANSPARENCY, *supra* note 12.

30. See *id.* (explaining that tuition is also known as “sticker price”).

31. *How Much Does Law School Cost? Average Law Degree Tuition & Costs*, COLL. AVE STUDENT LOANS (Apr. 4, 2023), <https://www.collegeavestudentloans.com/blog/how-much-does-law-school-cost-average-law-degree-tuition-costs/> [<https://perma.cc/6T8R-Y73Y>].

32. Ian Webster, *Value of \$2000 from 2000 to 2023*, OFF. DATA FOUND., <https://www.in2013dollars.com/us/inflation/2000?amount=2000> [<https://perma.cc/L4Q5-T6DX>].

33. *How Much Do Law Firms Pay Associates? A Look Back at 20 Years of Findings from the NALP Associate Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (Oct. 2014), <https://www.nalp.org/1014research> [<https://perma.cc/84DH-TUEK>]; *Findings on First-Year Salaries from the 2023 Associate Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (June 2023), <https://www.nalp.org/0623research> [<https://perma.cc/Y57B-4NTE>].

34. CARMODY & ASSOCS., SHAPING THE FUTURE OF JUSTICE: EFFECTIVE RECRUITMENT AND RETENTION OF CIVIL LEGAL AID ATTORNEYS IN CALIFORNIA 2 (2010).

35. *Wage Trends over 20 Years*, A.B.A. PROFILE OF THE LEGAL PRO., <https://www.abalegalprofile.com/wages.php#anchor3> [<https://perma.cc/8LSW-4ATW>].

36. PUB. INT. DRIFT, *supra* note 8, at 6 fig.4.

counterparts working at private firms.³⁷ Ultimately, to help decrease the debt-to-income ratio for public interest lawyers, there needs to be the following changes: (1) an increase in legal aid salaries, (2) an effective PSLF program, and (3) widely available LRAPs. These changes would make it easier for law students and graduates to pursue the type of public interest work they intended to do when they entered law school.

B. Paid Summer Internships, Law School Support, and More Effective LRAPs

Critical areas to counter public interest drift include paid summer internships and law school support. Providing funding for summer internships in public interest sectors is essential because it makes otherwise unpaid summer internships accessible for more students.³⁸ Career services increase the support for public interest work; their support may help students maintain their passion and endurance for social justice legal work. Ultimately, those who intend to pursue a public interest career and intern at a public interest organization are more likely to continue working in that sector, with a predicted drift probability of only twenty-seven percent, compared to sixty-one percent for those who do not intern in the public interest sector.³⁹

For example, the University of San Francisco School of Law (“USF Law”) has a long-standing tradition of public interest support and offers a Public Interest Law Certificate to students with a demonstrated commitment to public interest legal work.⁴⁰ In addition, USF Law maintains a Public Interest Law Foundation (“PILF”) that provides grants to students working in unpaid summer internships in the public sector.⁴¹

While such resources help students continue public interest work following graduation, they must work with LRAPs (and the federal PSLF program) to receive support for debt repayment as well. Ultimately, this combination of paid internships and debt support may help prevent drift by encouraging students to stick with their passion for public interest work.

37. See Elizabeth Olson, *BigLaw Salary Bumps Exacerbate Public-Interest Pay Gap*, BLOOMBERG L. (June 25, 2018, 5:44 AM), <https://news.bloomberglaw.com/us-law-week/biglaw-salary-bumps-exacerbate-public-interest-pay-gap> [<https://perma.cc/TX7M-QKZF>].

38. See CARMODY ET AL., *supra* note 5, at 68.

39. PUB. INT. DRIFT, *supra* note 8, at 11 tbl.1.

40. See *J.D. Certificates: Public Interest Law*, UNIV. OF S.F. SCH. OF L., <https://www.usfca.edu/law/programs/jd/certificates/public-interest-law> [<https://perma.cc/L482-BD89>].

41. See *Public Interest Law Foundation Summer Grant*, UNIV. OF S.F. SCH. OF L., <https://myusf.usfca.edu/law/pilf> [<https://perma.cc/FB3F-EEL7>].

C. The Positive Effect of Legal Aid Organizations

There are many positive developments when it comes to attracting law students and recent graduates into careers in legal aid. *Justice at Risk* documented the recruitment and retention challenges in legal aid, showing unsurprising results: relatively lower salaries, high debt burdens, and other financial concerns undergirded recruitment challenges.⁴² Consequently, legal aid organizations are now offering higher salaries, more advancement opportunities, and better benefits.⁴³ Additionally, these organizations are trying to build a clearer pathway to a job in legal aid. Organizations are prioritizing paying their summer law interns to address concerns about educational debt head-on.

Moreover, loan repayment assistance programs overseen by legal aid nonprofits can help lawyers manage debt while working in legal aid. Many legal aid organizations offer flexible, remote schedules along with cultures that emphasize wellness; diversity, equity, and inclusion; racial justice; mental health and burnout prevention; and work-life balance.⁴⁴ One legal aid organization is experimenting with four-day workweeks and other innovative structures.⁴⁵ Legal aid nonprofits are stepping up to make a career in public interest work a place to thrive and make an impact. Overall, legal aid organizations are well aware of what they need to offer and are stepping up to make the choice to stay in the public interest realm easier for law school students and graduates.

D. A Change in Student Perception

Recently, several prominent law schools have decided to stop participating in the *U.S. News & World Report's* law school rankings. One factor in their decision is that the rankings discount students who pursue certain public interest jobs.⁴⁶ By shifting away from increasing their rankings, law schools

42. CARMODY ET AL., *supra* note 5, at ii–iii.

43. *Id.* at 27, 40–41, 84.

44. DIANE T. CHIN ET AL., THE IMPACT OF COVID-19 ON CALIFORNIA LEGAL SERVICES ORGANIZATIONS: LESSONS LEARNED & INNOVATIONS 2, 6, 9, 12, 16–17 (John & Terry Levin Ctr. for Pub. Serv. & Pub. Int. L., Stan. Sch. of L. 2022).

45. *Id.* at 9.

46. Karen Sloan, *Stay? Go? Law schools diverge in US News rankings revolt*, REUTERS (Dec. 2, 2022, 12:27 PM), <https://www.reuters.com/legal/legalindustry/stay-go-law-schools-diverge-us-news-rankings-revolt-2022-12-02/> [<https://perma.cc/69WG-65PN>].

No. 6-ranked University of Pennsylvania Carey Law School, No. 37-ranked University of California, Davis School of Law, and No. 49-ranked University of Washington School of Law each said during the past week that they would not participate in the rankings this year . . . Yale Law School began the exodus on Nov. 16 and it quickly gained steam with the law schools at Harvard, Columbia and Michigan among the joiners.

could focus their efforts on providing more support and resources to public interest programming and services, which in turn may help prevent public interest drift. For example, Heather Gerken, the Dean of Yale Law School—which has been ranked number one by *U.S. News and World Report* since 1990—stated that the rankings “disincentivize schools from . . . helping students pursue public interest careers.”⁴⁷ Legal academics have noted “schools are rewarded in the rankings for high expenditures-per-student [how much the school spends relative to each student] instead of for keeping tuition low,” which is especially important for students looking to pursue public interest careers or those from marginalized backgrounds.⁴⁸ Gerken also said that “the rankings are misleading in part because they do not consider graduates in public interest fellowships funded by the schools [to] be fully employed.”⁴⁹ This further disincentivizes schools from launching or promoting these important fellowships.⁵⁰ Finally, USF Law recently announced that it would not participate in the *U.S. News & World Report’s* rankings as well, noting the publication’s “inability to capture the value of the mission-driven education that we provide here.”⁵¹ Altogether, while it is too early to make an empirical determination, it is safe to conclude that anything law schools do to provide support centering on public interest law will most likely have a positive effect on reducing drift. In this sense, diminishing the outsized role that rankings have on law school pedagogy, curriculum, and career resources is a step in the right direction.

Conclusion

Ultimately, all access-to-justice stakeholders—law schools; foundations and funders; state, local, and federal governments—have a role to play in supporting the next generation of legal aid advocates and preventing public interest drift. Increasing state and federal funding for legal aid and loan repayment assistance are key. High debt loads, lack of paid opportunities in internships or experiential courses, and a culture geared toward high-paying, big law employment all help explain why law students stray from their calling

Id.

47. Karen Sloan, *Yale and Harvard law schools to shun influential U.S. News rankings*, REUTERS (Nov. 17, 2022, 3:25 AM), <https://www.reuters.com/legal/legalindustry/top-ranked-yale-law-school-shun-flawed-us-news-rankings-2022-11-16/> [<https://perma.cc/5AB6-RUUB>].

48. *Id.* (for clarity, the author has defined the technical term “high expenditures-per-student” in brackets).

49. *Id.*

50. *Id.*

51. Susan Freiwald, *USF Law Will No Longer Provide Data to U.S. News*, UNIV. OF S.F. SCH. OF L. (Jan. 17, 2023), <https://www.usfca.edu/news/usf-law-will-no-longer-provide-data-us-news> [<https://perma.cc/AS2K-VB5A>].

to support low-income and other disadvantaged people caught up in the legal system. Through an array of strategies and actions, we can reduce public interest drift and ensure more passionate graduates end up doing what they want—increasing access to justice and providing high-quality, much-needed legal services to those in need.