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978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

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BEYOND ELITE LAW

Access to Civil Justice in America

Are Americans making under \$50,000 a year compelled to navigate the legal system on their own, simply give up because they cannot afford lawyers? We know anecdotally that Americans of median or lower income generally do without legal representation or resort to a sector of the legal profession that – because of the sheer volume of claims, inadequate training, and other causes – provides deficient representation and advice. This book poses the question: Whether we can at the current level of resources, both public and private, better address the legal needs of all Americans?.

Samuel Estreicher is the Dwight D. Opperman Professor of Law at New York University School of Law, where he directs the Institute of Judicial Administration and the Center for Labor and Employment Law. He is the Chief Reporter of the Restatement of Employment Law and recipient of the Labor and Employment Research Association's Susan C. Eaton Award for Outstanding Scholar-Practitioner. In addition to the law of the workplace, his areas of expertise include alternative dispute resolution, civil procedure, federal courts, foreign relations law, and administrative law.

Joy Radice is an associate professor at the University of Tennessee College of Law. Her research focuses on the civil access to justice gap, and how civil and criminal laws intersect to impact people with criminal records. She teaches in the Advocacy Clinic, directs a new Expungement Clinic, and teaches criminal law and a seminar on poverty, race, gender, and the law.

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SAMUEL ESTREICHER AND JOY RADICE



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Beyond Elite Law

Editors' Preface

Samuel Estreicher & Joy Radice

We are justly proud of the American legal system and the lawyers and judges who make it work. Our system, to the envy of much of the world, takes law seriously, aspires to reduce the gap between the law on the books and the law as lived, and strives to subject all within its remit to the rule of law. And yet, it remains, at its core, a system of elite law largely for the elite.

We are all engaged in elite law, whether as lawyers or academics. Each year, the law schools produce eager, bright graduates ready to provide legal services to a thin layer of the population — either by working for the major law firms that serve corporate America or for NGOs that practice law with an “impact” on important social issues. Some fortunate graduates find such work; others work for overburdened legal services or public defender offices, or hang a shingle, or practice in small firms although they are usually poorly prepared for the clientele they will encounter. Still many others drop out of the legal system entirely — perhaps their legal education will prepare them for a political or business career, or will not be relevant at all.

We hope in this book to spark a conversation that helps move us beyond elite law, to better align existing legal resources with the people who need representation or simply assistance in navigating bureaucracies but are not wealthy enough to access our “Cadillac” legal system and not poor enough to qualify for the limited supply of publicly supported legal aid.

There is a vital debate in the literature, which we explore, as to whether there is indeed a gap between the demand for legal services and the available supply of providers of such services. Survey instruments do not always faithfully capture underlying facts. Even if people “lump” their problems together in an undifferentiated bundle of hopes and anxieties and do not always see those problems as requiring legal services, one must ask whether able lawyers are in fact available for people making, say, under \$50,000 a year for:

- nonfatal claims of medical malpractice;
- employment disputes not amenable to class action treatment;

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- housing disputes involving landlord failure to make timely repairs;
- transactions like wills and guardianship, closings on a small business, purchasing a medallion to drive a taxicab, transferring property or arranging child custody between spouses seeking a divorce;
- consumer claims for a defective washer-dryer or automobile not living up to warranty;
- individuals seeking bankruptcy protection or reversal of an initial agency decision to deny unemployment compensation or social security disability benefits;
- veterans seeking mental health or other medical assistance from the daunting Veterans Administration; or
- immigrants seeking asylum or lawful residence status to escape the risk of deportation.

We know, anecdotally, that Americans of median or lower income generally do without legal representation in these types of situations or seek help from a sector of the legal profession that, because of the sheer volume of claims, inadequate training, and perhaps other causes, is a deficient source of representation and advice.

This book, we hope, will encourage the development of more systematic information to assist policymakers. We also know that most calls for reform in this area seek an unrealistic solution: increased public funding for civil legal services programs — when decades of budget cuts have resulted in a system that falls far short of meeting the basic legal needs of those considerably below the official poverty line. Although we support the “civil *Gideon*” movement, changes that require significant further public funding are not politically feasible for the foreseeable future.

The question for this book, and the central question for realistic policy improvements in this area, is whether, at the current level of resources (both public and private), we can do a better job of meeting the legal needs of Americans of median or lower income.

Some improvements involve a change in lawyer culture and acculturation encouraging lawyers, young and old, to see service to non-elite populations as part of their professional identity. Law schools have a role to play in terms of the values they transmit and the skills they impart. Law firms are key players as well, and they must consider refashioning pro bono programs that will provide needed training while being better directed to the goal of service to everyday Americans. Bar associations and courts must also advance service as a condition of membership in the bar.

Not all legal problems will in any foreseeable world attract able lawyers. System redesign is needed to help people better represent themselves in court proceedings or prepare necessary documents for transactions. The internet offers vital new avenues for effective self-representation, if coupled with proper professional advice.

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Intermediary institutions, like labor unions, worker centers, and ombudspersons, can also play a critical role supplementing representation and self-representation. Bar groups should not be able to inhibit the development of such alternatives through enforcement of vague rules against the unauthorized practice of law.

Forums other than traditional courts can help reduce the cost and formality of dispute resolution, enabling individuals to represent themselves or obtain limited-purpose representation from lawyers.

Law schools, too, need to embrace their role in developing a culture of service. They need to wake up to the reality that most of their graduates will not end up in the elite law firms, even assuming they can find a job requiring legal training at all. What the schools can do is train students to acquire the core competencies of a lawyer so that when they begin practice their skills are better matched to the needs of their likely clientele. They can also make sure they have internalized standards of professional service and understand the underlying economics of practice so that they can provide quality representation and advice in a high-volume setting. Such a development, in itself, would make an enormous contribution to access to civil justice in America.

This book is the product of leaders in the field who have contributed chapters that address each of these issues. They are outstanding judges, lawyers, and academics who care about the problem of access to justice and are actively working on making the system work better. We are proud to be associated with them in this endeavor.

During the work on this book, our good friend and mentor, Ted Eisenberg of Cornell Law School, died. His chapter on improving the database on claiming and dispute-resolution activity reflects his contributions as a leading voice for empirical study of the legal system and for tackling head-on the problem of access. This book is dedicated to his memory.

S.E.

J.R.

February 1, 2016

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Foreword

Dean Martha Minow

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical.¹

– Rt. Hon. Beverley McLachlin, Chief Justice of Canada (2007)

Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.²

– Frederick Douglass

Neglected in today's headlines, blogs, and talk radio is a silent shameful crisis inflicting suffering and costing the nation money, legitimacy, and decency. Our justice system has become inaccessible to millions of people who are poor, of modest or even average means. As a result, every day, we violate the "equal justice under law" promise engraved on the front of the grand United States Supreme Court. Americans who cannot afford legal help routinely forfeit basic rights because they cannot afford to enforce them. Inherently wrong and unfair, our practices are also short-sighted. Studies show that each dollar spent on civil legal assistance can save three to six dollars of public funds needed to deal with the consequences.³

The problem is not remote. It affects people in every neighborhood. The law does not enforce itself, and so we all suffer when people cannot enforce their legal rights. But of course the brunt of the failure falls on veterans seeking benefits the nation guaranteed, victims of domestic violence needing legal protection, tenants and homeowners asserting their legal rights, and others who cannot find legal help.

This book brings together a dream team of participants, organized by fine editors and introduced by the heroic leaders, retired Chief Justice Wallace Jefferson of the Supreme Court of Texas and Chief Judge Jonathan Lippman of the New York Court of Appeals. The chapters offer vigorous descriptions of the problem, vivid accounts

¹ Justice in our Courts and the Challenges We Face, Address to the Empire Club of Canada (Mar. 8, 2007), available at <http://speeches.empireclub.org/62973/data>.

² 1886 on the 24th anniversary of Emancipation, Washington, DC, available at www.americanswhotellthetruth.org/portraits/frederick-douglass/.

³ Martha Minow & Sharon Browne, *Funding Civil Legal Aid: A Bipartisan Issue*, THE HILL, Apr. 13, 2015, available at <http://thehill.com/blogs/congress-blog/judicial/238480-funding-civil-legal-aid-a-bipartisan-issue> (citing studies in New York and Massachusetts).

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of long-term efforts, and detailed analyses of the multiple elements needed for an effective reform agenda. If scored for degree of difficulty, each of these elements would achieve high numbers.

Describing the scope of the problem is challenging because by its very nature, the problem encompasses people who are not visible to law offices and courts because the individuals lack knowledge and resources to make their way there. Analyzing existing sources of legal assistance is also a challenge as the book rightly enlarges the field to include comparisons with other nations and consideration of meaningful services other than the provision of a lawyer. Currently, the United States rates as 65th out of 102 nations in terms of access to and affordability of justice.⁴ A full reckoning requires inclusion of criminal law and the impact of America's extraordinary incarceration levels on the civil justice needs of affected individuals and their families.⁵

So many do not even know when they have a right or defense to claim or when it is worthwhile to do so. The chapter authors advance understandings of the actual demand for legal services, and the results for those who never obtain full or even partial legal assistance. They offer a comparison with practices in other countries and estimate the scope of "lumping it" behavior as people give up without asserting their lawful rights. They outline the research necessary to gain deeper, reliable information about the scope of unmet legal needs. The book also includes critical chapters on the disparate impact of the justice access crisis on people of color, immigrants, and individuals caught in exceedingly complex situations.

With chapters on the promise and limitations of federally funded civil legal services, clinical legal education, law firm pro bono efforts, employee benefit plans, and local attorney referral programs, the book highlights the misalignment of incentives that contributes to failures to supply legal assistance for "routine" or "ordinary" problems. Improving access to lawyers requires analysis of the shifting cost structure and supply chains for legal services. Identifying the full range of existing and potential devices for compensation of attorneys and educational loan repayment and forgiveness programs, the chapters make a good start on work that over time should also include attention to different ways to organize people and digital resources to increase both efficiency and quality as further avenues for expanding access to legal help. Provision of legal help must include, as this book

⁴ World Justice Project, Rule of Law Index 2015, available at <http://data.worldjusticeproject.org/>; James Lamont, United States Ranks 65th for the Accessibility and Affordability of its Civil Justice, June 18, 2015, available at <http://law.passle.net/post/102ctvr/united-states-ranks-65th-for-the-accessibility-and-affordability-of-its-civil-jus?TW>.

⁵ Consider the problems posed by internet records that include arrests even when no conviction resulted. "One recent study found that 49 percent of African American men are arrested by 23. Further, this criminal-record penalty is twice as likely to punish black job seekers as it is white ones. This penalty also has fiscal ramifications: by one account, criminal records as a hurdle to employment cost the U.S. economy up to \$65 billion each year." Jason Tashea & Jon Tippens, *Helping Expunge an Inaccurate Criminal Record*, THE BLOG: HUFFINGTON POST, Apr. 2, 2015, available at www.huffingtonpost.com/jason-tashea/helping-expunge-inaccurate-criminal-record_b_6988750.html. As expungement of a criminal records is not "do-it-yourself-friendly," lawyers or other sources of expertise are needed. *Id.*

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does, procedural and substantive rules affecting class actions and other opportunities to aggregate claims.

America's failures to ensure access to justice will not be solved easily. There is no silver bullet. A major contribution of this book is the array of detailed ideas for reforms across multiple sectors, institutions, and practices. Hence, the book explores potential changes in bar admission rules, law school "incubator" programs to support the development of sustainable "low bono" and small firm practices, judicial financial assistance, substantive law changes to reduce traps for those who are self-represented, and modifications of bar rules to permit limited representation and non-lawyer involvement. Setting up laws and justice systems that require lawyers to navigate, and then making lawyers inaccessible, are not just features of the dark imaginations of fiction writers like Franz Kafka and Lewis Carroll. If we cannot provide lawyers, shouldn't we change the rules and procedures that require them? Chapter authors are attentive to both the opportunities and risks arising with expansion of mediation, arbitration, and grievance systems in person and online, new technologies and models to support self-help programs at courts and administrative agencies, and document production companies. An underlying theme is the obligation of lawyers to open channels for collaboration with and independent work by non-lawyers. Lawyers have not been able to resolve the justice gap. Labor unions, worker centers, social services agencies, and other "intermediate institutions" can be helpful but not if bar rules hamstring them.

Most disheartening are the avoidable tragedies. Knowing of people who would have kept their homes, their children, their jobs, their lives if their legal rights were enforced is so frustrating. But in this very frustration lies hope. Unlike so many tragedies of human suffering, the access to justice crisis can be fixed. Especially encouraging, this book includes vivid accounts of successful efforts. We should take heart. We should follow the examples of statewide access to justice commissions that are putting in motion key reform elements and efforts needed to build political will. Law firm leaders build strong pro bono into the culture and commitments of young and old lawyers and other staff. Bar associations exemplify what it looks like to pursue justice. Law schools demonstrate how service and education can change the lives of clients and future lawyers. Like those who have worked on access to justice in the past, a new generation can join the struggle. This book points the way. A. Philip Randolph said so well what will light the path: "Justice is never given; it is exacted and the struggle must be continuous for freedom is never a final fact, but a continuing evolving process to higher and higher levels of human, social, economic, political and religious relationship."⁶

⁶ Bayard Rustin, A. Phillip Randolph: *Dean of Civil Rights*, 76 THE CRISIS No. 4, Apr. 1969.

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Overview

Hon. Wallace B. Jefferson, former Chief Justice, Supreme Court of Texas

Thirty years ago, then-president of Harvard University Derek Bok delivered a stinging assessment of our justice system.¹ He observed that our country, which prides itself on efficiency and fairness, “has developed a legal system that is the most expensive in the world, yet cannot manage to protect the rights of most of its citizens.”² He famously observed that “[t]here is far too much law for those who can afford it and far too little for those who cannot.”³

How have Americans fared in the thirty years since then?

For those who can afford it, we have a top-notch legal system. Highly qualified lawyers, who know the art of cross-examination and who compose scholarly briefs, help courts dispense justice fairly and efficiently. But that kind of representation comes at a price. More often, litigants lack wealth, insurance is absent, and public funding is not available. Some of our most essential rights – those involving our families, our homes, and our livelihoods – are the least protected.

Veterans languish an average of eight months before the government processes their claims for disability, pension, and educational benefits.⁴ Their poverty rate has increased.⁵ They face physical and mental trauma, and they comprise 20% of the homeless population.⁶ They experience significantly higher rates of unemployment than nonveterans.⁷

¹ See Derek C. Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570 (1983).

² *Id.* at 574.

³ *Id.* at 571.

⁴ See James Dao, *Veterans Wait for Benefits as Claims Pile Up*, N.Y. TIMES, Sept. 28, 2012, at A1 (noting the average claims-processing rate in 2012).

⁵ See NAT'L CTR. FOR VETERANS ANALYSIS & STATISTICS, U.S. DEP'T OF VETERANS AFFAIRS, HEALTH INSURANCE COVERAGE, POVERTY, AND INCOME OF VETERANS: 2000 TO 2009, at 9 (2011), available at www.va.gov/vetdata/docs/SpecialReports/HealthIns_FINAL.pdf (“In 2000, about 5.0 percent of Veterans were living in poverty. By 2009, the poverty rate for Veterans was 6.3 percent”).

⁶ *United States: Leave No Veteran Behind*, ECONOMIST, June 4, 2011, at 38, available at www.economist.com/node/18775315 (noting that “[n]early a fifth of the homeless population in the United States are veterans” and that more face physical and mental challenges).

⁷ Marta Hoes, Comment, *Invisible Wounds: What Texas Should Be Doing for the Mental Health of Its Veterans*, 13 TEX. TECH ADMIN. L.J. 369, 373 (2012) (comparing the unemployment rate of veterans with the national average and finding the former to be elevated in comparison to the latter).

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Hon. Wallace B. Jefferson

The financial crisis has created ripple effects throughout society. Lower- and middle-income homeowners and tenants are grappling with legal issues as never before.⁸ Facing foreclosure or eviction, they can little afford representation to protect their rights. Over the past several years, high numbers of consumers and small businesses have sought bankruptcy protection.⁹

American children are also at risk when interacting with the legal system. A family's lack of resources dramatically affects domestic matters, like custody and child support. Apart from that, families must grapple with issues involving juvenile justice. Texas has one of the largest school systems in the nation, with more than 4.4 million students.¹⁰ Children who misbehave in school are often issued tickets and may be charged with Class C misdemeanors.¹¹ They must appear in court to contest the charges, but they have no right to counsel.¹²

Cash-strapped families forgo representation, often with devastating consequences, such as arrest warrants and criminal records.

In 2013, I delivered the annual William J. Brennan, Jr. Lecture on State Court and Social Justice at New York University School of Law. My speech, titled "Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights,"¹³ focused on the ways in which our system fails to protect not just the poor, but also the middle class. Statutory rights to counsel generally apply only to the indigent, as do most pro bono efforts.¹⁴ Legal aid eligibility is generally capped at 125% of federal poverty guidelines.¹⁵ Thus, a family of four with an income of

⁸ See Aleatra P. Williams, *Real Estate Market Meltdown, Foreclosures and Tenants' Rights*, 43 IND. L. REV. 1185, 1187 (2010) ("The consequence of the current real estate market collapse and the resulting foreclosures and their effect on the tenant market is unparalleled in history").

⁹ Although data suggest that consumer and small business bankruptcies may now be declining, their levels remain elevated, with 2010 levels more than three times what they were in 2006. See *Drop in Small Business Bankruptcies Outpaces Decline in Consumer Bankruptcies*, EQUIFAX, 1 (2011), www.equifax.com/ecm/pressroom/BankruptcyDataPrimerFinal.pdf (charting the rate of small business and consumer quarterly petitions for bankruptcy from the first quarter of 2006 through the last quarter of 2010).

¹⁰ See TEX. APPLESEED, TEXAS'[S] SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION 3 (2007), available at www.texasappleseed.net/pdf/Pipeline%20Report.pdf (finding that at least 4.4 million students attend public schools in the state's 1037 school districts).

¹¹ See Wallace B. Jefferson, *Recognizing and Combating the "School-to-Prison" Pipeline in Texas*, NAT'L CTR. FOR STATE COURTS, available at www.ncsc.org/sitecore/content/microsites/futuretrends2012/home/Otherpages/SchoolToPrisonPipelineInTexas.aspx (last visited Oct. 11, 2013).

¹² See TEX. APPLESEED, TEXAS'[S] SCHOOL-TO-PRISON PIPELINE: TICKETING, ARREST & USE OF FORCE IN SCHOOLS 71 (2010), available at www.texasappleseed.net/images/stories/reports/Ticketing_Booklet_web.pdf (noting that juveniles in Texas do not have a right to appointed counsel in Class C misdemeanor cases and observing that young people may plead guilty to such charges simply because they are unaware of viable defenses).

¹³ Portions of this preface were derived from that speech, which was published as: Hon. Wallace B. Jefferson, *Brennan Lecture: Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights*, 88 N.Y.U. L. REV. 1953 (2013). See also Chapter 28 by Rachel Ekey in this volume.

¹⁴ See, e.g., TEX. FAM. CODE § 107.013(a)(1) (West Supp. 2012) ("In a suit filed by a governmental entity in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of . . . an indigent parent of the child who responds in opposition to the termination.").

¹⁵ Financial Eligibility Policies, 45 C.F.R. § 1611.3(c)(1) (2012).

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\$30,000 generally will not qualify for services.¹⁶ But after that family pays for shelter, sustenance, and the other necessities of daily life, it is unlikely that the family will be able to afford a lawyer for even the most basic legal necessities.¹⁷

With no real alternative, litigants are increasingly representing themselves. Although there are no comprehensive statistics on self-represented litigants in our nation's courts,¹⁸ an American Bar Association (ABA) survey found that 60% of state judges recently noted an increase in the number of litigants representing themselves.¹⁹

Yet, we have more lawyers than at any time in our history. "In 1960, there was one lawyer for every 627 people in the United States";²⁰ today, there is one for every 252.²¹ Certainly, it can be argued that more lawyers are necessary in an increasingly complex world. Nevertheless, it is ironic that, as litigants are increasingly forced to represent themselves, law school graduates cannot find jobs.²² What accounts for this mismatch, and how can we ensure that our system is accessible to all segments of our society?²³

Increased pro bono work by lawyers is always a good idea, and many lawyers do step in to help those who could not otherwise afford their services. New York now requires bar applicants to complete fifty hours of pro bono legal work.²⁴ Many law schools mandate pro bono service from their students²⁵ and have created legal clinics providing excellent representation for the indigent.

¹⁶ But see 45 C.F.R. § 1611.5(a) (2012) (noting that in some instances, eligibility may be capped at 200% of the federal poverty guidelines by household size as determined by the Department of Health and Human Services); see also Notice, 78 Fed. Reg. 5182, 5183 (Jan. 24, 2013) (establishing a poverty guideline of \$23,550 for a four-person household). Thus, in some instances, a household of four making less than \$47,100 can qualify.

¹⁷ See Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 *FORDHAM L. REV.* 719, 721 (2001) ("The fact is that the majority of Americans live on quite modest incomes and lack the discretionary spending power necessary to purchase expensive legal services in today's market").

¹⁸ See Nathan Koppel, *More Strapped Litigants Skip Lawyers in Court*, *WALL ST. J.*, July 22, 2010, at A4 (noting the lack of such statistics).

¹⁹ *Id.*

²⁰ Robert C. Clark, *Why So Many Lawyers? Are They Good or Bad?*, 61 *FORDHAM L. REV.* 275, 275 (1992).

²¹ Dividing the number of people in the United States by the number of attorney shows that there is one attorney for every 251.94 people. See PAUL MACKUN & STEVEN WILSON, U.S. CENSUS BUREAU, *POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010*, at 4 tbl.2 (2011), available at www.census.gov/prod/cen2010/briefs/c2010br-01.pdf (showing total U.S. population as 308,745,538).

²² Catherine Rampell, *The Lawyer Surplus, State by State*, *N.Y. TIMES* (June 27, 2011, 11:35 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/> (noting that "across the country, there were twice as many people who passed the bar in 2009 . . . as there were [job] openings").

²³ One explanation focuses on financial incentives. See John O. McGinnis & Russell D. Mangas, *Op-Ed., First Thing We Do, Let's Kill All the Law Schools*, *WALL ST. J.*, Jan. 17, 2012, at A15 (observing that the steep cost of legal education results in higher legal fees, making legal services unaffordable to the middle class "at a time when increasing complexity demands more access to these services" and concluding that "the current system leaves citizens underserved and young lawyers indebted").

²⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2013) (imposing the pro bono requirement on graduates who will be admitted to the bar on or after January 1, 2015, and following an examination); see also Joel Stashenko & Christine Simmons, *Lippman Unveils Rule Detailing Bar Admission Pro Bono Mandate*, 248 *N.Y. L.J.*, Sept. 20, 2012, at 1 (reporting on the new requirement). See Chapter 24 by Judge Graffeo in this volume.

²⁵ See Robert Granfield, *Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs*, 54 *BUFF. L. REV.* 1355, 1364 (2007) ("While mandatory pro bono

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Hon. Wallace B. Jefferson

But encouraging or even requiring pro bono representation cannot match the scale of the problem. In 2009, Texas attorneys provided as many as 2.5 million hours of free legal or indirect services to the poor.²⁶ While this is impressive, we are still meeting only about 20–25% of the civil legal needs of low-income Texans.²⁷ Even if we required every Texas lawyer to represent at least one client pro bono, we would serve less than 40% of indigent individuals in need of legal services,²⁸ to say nothing of the millions of middle-class individuals who need representation. In Southwest Texas alone, 2.6 million people qualify for legal aid.²⁹ That means there are 21,000 potential clients for every lawyer employed by the region's main legal aid office.³⁰ This situation is echoed across the country.³¹ Increased funding would help provide more services. But in today's economic climate, even maintaining existing funding has proved challenging.³²

Neither money nor additional pro bono work is enough.³³ And if neither money nor increased pro bono service will suffice to meet the challenge, what more can we do?

remains hotly contested within the organized bar, the majority of American law schools have already implemented some type of pro bono program and many have adopted mandatory requirements”).

²⁶ D'Arlene Verduin & Paul Ruggiere, *State Bar of Texas Survey of 2009 Pro Bono*, TEX. ACCESS TO JUST. COMM'N, at i (Mar. 31, 2010), available at www.texasatj.org/files/file/Pro%20Bono%20Survey%202009.pdf.

²⁷ *Facts and Figures*, TEX. ACCESS TO JUST. COMM'N, available at www.texasatj.org/facts (last visited Oct. 11, 2013).

²⁸ Tex. Access to Justice Comm'n, *A Report to the Supreme Court Advisory Comm. from the Texas Access to Justice Comm'n on the Court's Uniform Forms Task Force 5* (2012).

²⁹ *Who We Are*, TEX. RIO GRANDE LEGAL AID, available at www.trla.org/about/whoweare (last visited Oct. 11, 2013).

³⁰ *Id.*

³¹ See Gillian Hadfield, *Lawyers, Make Room for Nonlawyers*, CNN (Nov. 25, 2012, 12:25 PM), available at www.cnn.com/2012/11/23/opinion/hadfield-legal-profession (arguing that “the demand for ordinary legal help is simply too massive to meet with increased court funding, legal aid or pro bono work”); chapter by Professor Hadfield in this volume.

³² There has been a persistent campaign in Texas for legal aid funding. See Letter from Wallace B. Jefferson, Chief Justice, Supreme Court of Tex., and Nathan L. Hecht, Justice, Supreme Court of Tex., to Royce West, Tex. State Senator2 (June 1, 2011), available at www.supreme.courts.state.tx.us/advisories/Letter_West_060111.pdf (seeking funding for basic civil legal services for indigent Texans). In 2011, the Texas legislature authorized gap funding for legal aid. See Press Release, Tex. Access to Just. Comm'n, *Texas Access to Justice Commission and Foundation Applaud the Texas Legislature for Providing Funding for the State's Legal Aid System* (July 21, 2011), available at www.texasatj.org/commissionandfoundationapplaudlegislature (describing the Texas Legislature's appropriation of \$17.5 million for civil legal aid and \$7.6 million for county indigent defense programs to compensate for a decline in IOLTA funding); see also H. Con. Res. 22, 82d Leg., 1st Called Sess. (Tex. 2011) (commending members of the Texas Supreme Court for advocating for funding “to ensure that all citizens have equal access to the civil justice system”).

³³ Derek Bok, echoing a call for reform that still rings true, has argued:

[M]oney alone will not suffice. In cases involving . . . disputes that touch the lives of ordinary folk, judges will have to develop less costly ways of resolving disputes . . . Likewise, lawyers will need to devise new institutions to supply legal services more cheaply. Such changes, in turn, will undoubtedly force the organized bar to reexamine traditional attitudes toward fee-for-service and the unauthorized practice of law.

Bok, *supra* note 1, at 580.

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A great deal. Fortunately, Professors Estreicher and Radice, along with the judges, scholars, and lawyers involved in *Beyond Elite Law: Access to Civil Justice in America*, have comprehensively studied the barriers to justice faced by many Americans. The book begins by examining the current state of access to, and sources of assistance for, legal services by working Americans. It provides an overview of the many challenges to accessing our system, with a particular emphasis on the issues faced by self-represented litigants.

But this volume does not only examine the problems, it outlines a reform agenda to mitigate them. Every aspect of the legal system, from legal education through delivery of services, is covered. Innovative approaches, involving both the private and public sectors, are presented to help us ensure that ordinary Americans can get the legal services they need.

The book's final section, "Creating a Culture of Service," is a must-read for anyone involved in the delivery of legal services. The section examines ways in which law firms, bar associations, and law schools can help deliver equal justice to all Americans. The creative solutions to some of our system's woes are nothing short of inspiring.

The phrase "access to justice" is often thought of in terms of providing legal services to the poor. It is that, to be sure, but an accessible justice system requires that all segments of our society be able to utilize it. Viewed this way, our remedies must be more expansive as well.³⁴ Just as no single issue created the barriers, there is no unitary solution.

The legal profession must adapt to evolving procedures and times and must embrace change, even if that change sometimes comes at our own expense. Too often, when faced with issues that might adversely affect the bottom line, our profession acts less like a profession and more like a trade.³⁵ When vast segments of our society are unable to utilize the legal system, we must examine whether we should change the way legal services are delivered and how courts can create more accessible systems. A two-tiered justice system denies "liberty and justice for all." We can do much better. This book shows us how.

³⁴ See Lawrence M. Friedman, *Access to Justice: Some Historical Comments*, 37 *FORDHAM URB. L.J.* 3, 15 (2010) (noting that "access to justice is a complex issue" and that "[a] solution to the 'problem' depends on how the problem is defined and what policy goals one wishes to reach").

³⁵ See, e.g., George C. Harris & Derek F. Foran, *The Ethics of Middle-Class Access to Legal Services and What We Can Learn from the Medical Profession's Shift to a Corporate Paradigm*, 70 *Fordham L. Rev.* 775, 804 (2001).

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