

LAW OR JUSTICE? WHAT FUTURE FOR THE LEGAL PROFESSION?

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The Challenge

*Justice for only those who can afford it
is neither justice for all nor justice at all.*¹

Is the future of our profession law or justice? There is a lot of law in our profession. There is some charity and some generosity. Justice? Not nearly enough to suggest it is at the core of our profession, our mission, or our future.

Every law school orientation begins with pronouncements about justice. Every law school graduation invokes justice as the foundation for the profession. And every swearing-in ceremony lifts up the pursuit of justice as the profession's goal.²

From those noble beginnings, one might be persuaded that the goal of our foundation is justice. And yet, is that really at all true? Some see the profession as a noble one, with justice as its mission.³ Others see our profession as one basically serving its own interests with a dash of justice.⁴ As some observe:

* Professor of Law, Loyola University College of Law. This essay is dedicated to John and June Mary Makdisi. I admire them both for the way they live their lives.

¹ Nathan Hecht, *The Twilight Zone*, DAEDALUS (Winter 2019), <https://www.amacad.org/publication/twilight-zone>.

² *ABA Mission and Goals*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/about_the_aba/aba-mission-goals/ (last visited March 14, 2019).

³ *Id.* ("Mission: To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession").

⁴ Robert Gordon, *Lawyers, the Legal Profession and Access to Justice in the United States: A Brief History*, DAEDALUS (Winter 2019), <https://www.amacad.org/publication/lawyers-legal-profession-access-justice-united-states-brief-history> ("In the last century, legal professionals and others have taken small steps to provide access to legal processes and legal advice to people who could not otherwise afford them. By doing so, they have inched closer to the ideals of universal justice. Though the organized bar has repeatedly served its own interests

In no profession is the gulf greater between ideals and practices than it is for lawyers. Ideally, justice is a universal good: the law protects equally the rights of the rich and the poor, the giant corporation and the small business, the innocent and the criminal accused. The ethical imperative that lawyers must zealously serve the interests of their clients can be justified, and reconciled with the goal of universal justice, only if all other affected parties (including the clients' adversaries) will be competently represented as well. In practice, of course, access to the complex and expensive procedures of law and the services of lawyers is largely determined by clients' ability to pay: the major share of legal services goes to business entities and wealthy people. The lawyers who enjoy the greatest professional success and prestige do most of their work on behalf of the rich and powerful.⁵

The legal profession provides those who practice it good careers and generous compensation. Overall, law is the second highest paying profession in the country.⁶

before those of the public, and has restricted access to justice for the poor, it has been a relatively constructive force").

⁵ *Id.*

⁶ Marguerite Ward, *The 25 highest paying jobs in America*, CNBC (July 26 2016), <https://www.cnbc.com/2016/07/26/the-25-highest-paying-jobs-in-america.html>. In 2017, the 792,500 lawyers in the US earned a median salary of \$119,2500. BUREAU OF LABOR STATISTICS, *Occupational Outlook Handbook* (Oct. 10, 2018), <https://www.bls.gov/ooh/legal/lawyers.htm>. Compare to the 713,800 physicians and surgeons whose median pay is \$208,000 per year. *Id.* at <https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm>. Judges, magistrate judges, and magistrates received a median pay of \$133,840 per year in 2017. *Id.* (search for "judges" and "hearing officers"). Administrative law judges, adjudicators, and hearing officers had a median pay of \$94,790 in May 2017. *Id.* Law professors average \$145,732 per year. Yale Law School Career Development Office, *Entering the Law Teaching Market 2018-2019*, p. 9 (2019), https://law.yale.edu/system/files/area/departments/cdo/document/cdo_law_teaching_public.pdf. As some observe:

I think the expectation that American lawyers have regarding income is a huge problem for American lawyers, and interestingly

Yet, the lack of justice in our country is blatant, serious, and widespread. There are three major manifestations of the lack of justice in the way we have structured the legal system and our profession.

The first is lack of access to lawyers who could help people with their individual legal problems.

The second is blocking access to the courts, because our profession has created and profits off of a system where it seems the only way individual people can get their problems solved is to go through the small gateway of assistance provided by lawyers.

The third is the neglect of community justice exemplified by a lack of commitment to address the fact that the vast majority of people do not have enough power to take big issues into their own hands and bring about changes. While these are not always legal issues alone, lawyers could help with those justice struggles. On the whole, however, they do not.

If law alone is the goal of our profession, the status quo is acceptable. However, if justice is the goal for our profession, then substantial transformation in all three areas is essential.⁷

enough, it's not a problem for their counterparts in other Western societies. Lawyers in France and Britain don't make this much money. Lawyers in Canada don't make this much money. They live more modest lives. We'd probably be better off if we did. But finally, you reach the point when you're a full-time academic when you say to yourself, "You know, you probably ought to quit talking about that."

Regan Morris, *The Life and Career of Thomas Shaffer, Writer on Law and Legal Ethics*, LAW CROSSING, <https://www.lawcrossing.com/article/785/Thomas-L-Shaffer/> (last visited March 14, 2019).

⁷ In discussing justice in terms of the legal system and the legal profession, I am following the definition of justice set out by John Rawls. Justice is essentially founded on the principle of fairness between people and social institutions. JOHN RAWLS, *A THEORY OF JUSTICE* 10-15 (Harvard University Press 1999) (1971). Whether a system is fair or just depends in part on the way the benefits of that system are distributed. Social justice, as defined by John Rawls, respects the right to basic individual liberty and economic improvement, but insists that liberty, opportunity, income, wealth, and the other social bases of self-respect are to be distributed equally, unless an unequal distribution is to everyone's advantage and any inequalities are arranged so they are open to all. *Id.* at 52-4. In plain language, this means that a system is fair and just if people would be willing to trade places or opportunities for their children with others in the system. This also presupposes there is a basic minimum of access to fairness available to everyone. Does anyone

Lack of Access to Lawyers

The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion more often than not.⁸ Beyond a doubt, most people who need lawyers cannot get them. A recent Legal Services Corporation report estimated that over eighty percent of the civil legal needs of poor people go unmet every year.⁹ These problems are worse for people who are already burdened by inequality, as other studies document that African Americans and Hispanics particularly are.¹⁰ As a result, the vast majority of legal problems are never even presented to a lawyer.¹¹ The most telling examples are in the areas of family, housing, and immigration.

Family

Though no one has to go to court to marry, everyone has to go to court to divorce. In 2013, the American Bar Association reported that “[n]ational data indicates that in family law matters, between 60 to 90 percent of the cases involve at least one unrepresented party.”¹²

dispute that people with resources and education would not be excited to trade places in society, for themselves or their children, with the millions of people less well off? I suggest that the lawyer who argues against the proposition that the current system is unjust would be the kind of person best described by Upton Sinclair: “It is difficult to get a man to understand something when his salary depends on his not understanding it.” *Upton Sinclair*, NEW WORLD ENCYCLOPEDIA (2016), http://www.newworldencyclopedia.org/entry/Upton_Sinclair.

⁸ National Center for State Courts, *Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*, p. 10 (2016), <https://www.ncsc.org/services-and-experts/areas-of-expertise/children-and-families/family-justiceinitiative/~media/DD6B40583DA449B29B6A5ED024BC0D96.ashx> [hereinafter NCSC 2016 Report].

⁹ *2017 Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans*, LEGAL SERVICES CORPORATION, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report> (last visited March 16, 2019).

¹⁰ Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S. C. L. REV. 443, 446-447 (2016).

¹¹ *Id.* at 447-48.

¹² American Bar Association, House of Delegates, *Resolution 108*, p. 46 (Feb. 11, 2013), <https://www.americanbar.org/content/dam/aba/administrative/deliver>

As is well known, the presence or absence of lawyers can make a difference. One study showed that 83 percent of domestic violence victims with attorneys obtained a protective order, whereas only 32 percent of victims without a lawyer did.¹³

Unfortunately, there are no reliable national statistics for unrepresented people in domestic cases nationwide. However, there are numerous state court findings which paint a sufficiently clear picture. In Arizona, 88 percent of family law cases had at least one party without representation.¹⁴ In California child support cases, at one point neither party was represented 79.2 percent of the time in cases involving the district attorney.¹⁵ In Massachusetts, 80 percent of the people in Probate and Family Courts do not have lawyers.¹⁶ New Hampshire reports almost 70 per cent of family law cases as having one pro se party, as 97 percent of domestic violence cases also do.¹⁷ The state of New York reported that 1.8 million people went through state court without an attorney.¹⁸ In Utah, over 80 percent of

y_legal_services/ls_del_unbundling_resolution_108.pdf.

¹³ Jennifer S. Rosenberg & Denise A. Grab, *Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence*, p. 7 (2015), <https://policyintegrity.org/files/publications/SupportingSurvivors.pdf>.

¹⁴ Bruce Sales, Connie Beck & Richard Haan, *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 553, 580 (1992).

¹⁵ Judicial Council of California, *California's Child Support Commissioner System: An Evaluation of the First Two Years of the Program*, p. 16 (2000), <https://www.courts.ca.gov/documents/cscr2000.pdf>. More recent county numbers in Contra Costa County indicate that parties were unrepresented in family law matters filed in court between 67 percent and 74 percent of the time. Magda Lopez, *Chart: Percentage of Unrepresented Petitioners in Family Law Cases in Contra Costa Superior Court*, CONTRA COSTA LAWYER (Oct. 1, 2016), <http://cclawyer.cccba.org/2016/10/chart-percentage-of-unrepresented-petitioners-in-family-law-cases-in-contra-costa-superior-court/>.

¹⁶ J.D. Smeallie, *Introducing the BBA Statewide Task Force to Expand Civil Legal Aid in Massachusetts*, BOSTON BAR JOURNAL (April 3, 2013), <https://bostonbarjournal.com/tag/unrepresented-litigants/>.

¹⁷ State of New Hampshire Judicial Branch, *Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts*, p. 2 (January 2005), <http://www.nh.gov/judiciary/supreme/prosereport.pdf>.

¹⁸ New York State Courts Access to Justice Program, *Report to the Chief Judge and the Chief Administrative Judge of the State of New York*, p. 59 (2016),

divorce cases have at least one unrepresented party.¹⁹ Similar percentages have been reported in other states.²⁰

In other state court non-family civil matters, a study for the Chief Justices of State Courts found that in 76 percent of non-domestic civil state court matters at least one party was not represented by a lawyer.²¹

Housing

Hundreds of thousands of homeowners lost their homes each year without legal counsel. At the peak of the financial crisis, in 2009 and 2010, more than 1 million foreclosures were completed annually.²² In many places in the US, a majority of those in foreclosure did not have an attorney. In Connecticut, over 60 percent were without counsel. In New York foreclosures on subprime or non-traditional mortgages, between 84 and 92 percent of homeowners were unrepresented. In one county in Ohio, 86 percent of those facing foreclosures did not have counsel.²³

http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2016report.pdf. This is an improvement from the 2.3 million who went through the civil justice system without counsel in 2009. Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York*, p. 6 (2016), http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/2016_Access_to_Justice-Report.pdf. In 2010, New York reported that more than 90 percent of low-income New Yorkers appeared in civil court without counsel. *Id.* at 1.

¹⁹ Judicial Council of California, *Report to the Judicial Council*, p. 2 (2014), http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf

²⁰ See generally National Association for Court Management, *Pro Se Statistics* (2006), https://nacmnet.org/sites/default/files/04Greacen_ProSeStatisticsSummary.pdf.

²¹ NCSC 2016 Report, *supra* note 8, at 9.

²² CoreLogic, *United States Residential Foreclosure Crisis: Ten Years Later*, p. 6 (2017), <https://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-10-year.pdf>. See also Corbett B. Daly, *Home foreclosures in 2010 top 1 million for first time*, REUTERS (Jan. 12, 2011), <https://www.Reuters.com/article/us-usa-housing-foreclosures/home-foreclosures-in-2010-top-1-million-for-first-time-idUSTRE70C0YD20110113>.

²³ Melanca Clark & Maggie Barron, *Foreclosures: A Crisis in Legal Representation*, p. 2 (2009), <https://www.brennancenter.org/sites/default/files/legacy/Justice/Foreclosure%20Report/ForeclosuresReport-ExecSum.pdf>.

Hundreds of thousands of people are evicted each year without counsel. Around 900,000 renters are evicted every single year.²⁴ Over the years, millions have been evicted.²⁵ Nearly all go through the process without lawyers. Overwhelmingly landlords have lawyers and overwhelmingly tenants do not. Pew Charitable Trust found that 85 to 90 percent of landowners nationally show up in court with a lawyer.²⁶ In the 33,000 evictions cases filed annually in the District of Columbia, over 90 percent of landlords had lawyers and over 90

²⁴ *National Estimates: Eviction in America*, EVICTION LAB (May 11, 2018), <https://evictionlab.org/national-estimates/>. This is a bit less than half the number of evictions actually filed each year. See also Emily Badget & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES (April 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>.

²⁵ An estimated 3.7 million renters nationwide have gone through an eviction. Chris Salviati, *Rental Insecurity: The Threat of Evictions to America's Renters*, APARTMENT LIST (Oct. 20, 2017), <https://www.apartmentlist.com/rentonomics/rental-insecurity-the-threat-of-evictions-to-americas-renters/>. Evictions cause more than just the loss of shelter. As Princeton University's Eviction Lab points out:

Eviction causes a family to lose their home. They often are also expelled from their community and their children have to switch schools. Families regularly lose their possessions, too, which are piled on the sidewalk or placed in storage, only to be reclaimed after paying a fee. A legal eviction comes with a court record, which can prevent families from relocating to decent housing in a safe neighborhood, because many landlords screen for recent evictions. Studies also show that eviction causes job loss, as the stressful and drawn-out process of being forcibly expelled from a home causes people to make mistakes at work and lose their job. Eviction also has been shown to affect people's mental health: one study found that mothers who experienced eviction reported higher rates of depression two years after their move. The evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it.

How does an eviction affect someone's life?, EVICTION LAB, <https://evictionlab.org/why-eviction-matters/#eviction-impact> (last visited March 17, 2019).

²⁶ Teresa Wiltz, *How Free Legal Help Can Prevent Evictions*, THE PEW CHARITABLE TRUSTS STATELINE BLOG (Oct. 27, 2017), <https://www.Pewtrusts.org/en/research-andanalysis/blogs/stateline/2017/10/27/how-free-legal-help-can-prevent-evictions>.

percent of tenants did not.²⁷

In evictions it is proven that the presence or absence of a lawyer makes a difference.²⁸ Those who have lawyers are six times as likely to stop their evictions compared to those who do not.²⁹ Lawyers defending evictions explain that, not only do most people facing eviction not have lawyers, but they usually do not even make it to court and just leave or are illegally thrown out.³⁰ An analysis of Baltimore housing court evictions, where landlords file 150,000 cases a year, found that the courts can only operate and process so many case because it depends on renters not showing up or the system would be overwhelmed.³¹ On busy days “a case can easily receive less than 30 seconds of judicial review.”³² In Richmond, Virginia, where a review of evictions determined the median amount of rent owed was \$686, landlords bring cases in bulk because most of those evicted

²⁷ Charles Allen, Kenyan R. McDuffie & Mary M. Cheh, *Low-income tenants in D.C. may soon get legal help*, WASHINGTON POST (May 18, 2017), https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2017/05/18/low-income-tenants-in-d-c-may-soon-get-legal-help/?hpid=hp_hp-top-table-main-lawyer-free%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-lawyer-free%3Ahomepage%2Fstory&utm_term=.f33efb204317.

²⁸ The Colorado Center on Law and Policy reviewed 93,000 eviction filings from 2001 through 2017. It found that renters who lacked legal representation were evicted 68 percent of the time from private housing and 43 percent of the time from public housing. While only 1.5 percent of private reenters had lawyers and public housing renters had lawyers between 1 and 3 percent of the time, landlords had lawyers 100 percent of the time. If they got a lawyer, 80 percent of the public housing renters were able to remain, and 94 percent of private renters were able to stay. Aubrey Hasvold & Jack Regembogen, *Facing Eviction Alone: A Study of Evictions*, pp. 8-9 (2016), https://cclponline.org/wp-content/uploads/2017/10/Facing-Eviction-Alone-9-11-17_revised.pdf

²⁹ A pilot program in Washington D.C. providing free lawyers to people facing eviction resulted in six times more favorable outcomes than those of the unrepresented. Allen et al., *supra* note 27.

³⁰ I have learned this in conversation with Davida Finger, Professor of Law, Loyola University New Orleans College of Law, who not only represents people in housing law situations, but also recently completed a comprehensive study of evictions in New Orleans that will be published in a forthcoming article by the *University of District of Columbia Law Review* (volume 22).

³¹ Rachel M. Cohen, *Welcome to the Courtroom That is Every Renter's Nightmare*, NEXT CITY (Sept. 14, 2015), <https://nextcity.org/features/view/rent-court-baltimore-tenant-rights-cities>.

³² *Id.*

never make it to the courtroom.³³ A legal aid lawyer there pointed out “The whole system works on default judgments and people not showing up.”³⁴

The consequences of eviction are dramatic, including families becoming homeless, children missing school, and losing public benefits like SNAP food stamps and Medicaid. One legal aid lawyer once said that “[a]n eviction isn’t one problem, it’s like 12 problems.”³⁵

Immigration

Hundreds of thousands of immigrants are processed by the courts without counsel.³⁶ The U.S. Department of Justice reported that in 2018 there were 697,777 cases pending before 334 immigration judges.³⁷ ICE reports it holds as many as 39,00 people in detention daily.³⁸ Immigration is a life and death issue for those who seek asylum with reports of dozens of people killed or harmed after being deported.³⁹ Denial rates for those seeking asylum have increased by

³³ Badget et al., *supra* note 24.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Immigration proceedings can even be held by videoconference and telephone conference. 8 CFR 1003.25 (c). Despite recommendations from the General Accounting Office (“GAO”) that video and telephone conferencing (“VTC”) be tabulated to track how often they are used and evaluated to see if it they are content-neutral, that has not yet occurred. Immigration court officials have reported to the GAO challenges related to VTC hearings, including difficulties in maintaining connectivity, hearing respondents, exchanging paper documents, conducting accurate foreign language interpretation, and assessing the demeanor and credibility of respondents and witnesses. GAO, *Statement of Rebecca Gambler before the Subcommittee on Border Security and Immigration, Committee on the Judiciary, U.S. Senate*, p. 17 (April 18, 2018), <https://www.gao.gov/assets/700/691/343.pdf>.

³⁷ Andrew R. Arthur, *New Immigration Court Statistics Released*, CENTER FOR IMMIGRATIONS STUDIES (May 10, 2018), <https://cis.org/Arthur/New-Immigration-Court-Statistics-Released>.

³⁸ Tara Tidwell Cullen, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It’s Alarming*, NATIONAL IMMIGRANT JUSTICE CENTER BLOG (March 13, 2018), <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

³⁹ Maria Sacchetti, *Death is waiting for him*, WASHINGTON POST (Dec. 6, 2018), <https://www.washingtonpost.com/graphics/2018/local/asylum-deported-ms->

almost 50 percent recently.⁴⁰

Over the years, a very low percentage of people in detention have been represented by counsel, ranging from a recent high of 30 percent to a low of 10 percent in 2006.⁴¹ One analysis of over a million deportation cases over a five-year period found that only 37 percent of *all* immigrants and a mere fourteen percent of *detained* immigrants were represented. Those with representation secured relief at a rate fifteen times greater than the unrepresented.⁴² Since 2000, the overall percentage of people appearing in immigration court with legal representation has fluctuated from 25 percent to 65 percent.⁴³ The percentage of represented people in immigration court who are not detained is between 60 and 80 percent.⁴⁴

These statistics include over 40,000 children.⁴⁵ Like adults, the single most important factor influencing the outcome of immigration cases for unaccompanied children is whether or not they have an attorney. Nearly three out of four (73%) children who were represented by an attorney were allowed to stay in the U.S., compared to only 15 percent of those without counsel.⁴⁶

The situation is daunting. For example, in Fresno, California, there are an estimated 17 attorneys who practice immigration law in an area with about 200,000 immigrants.⁴⁷ One such attorney, Jennifer

13-honduras/?utm_term=.8f1001807978.

⁴⁰ Arthur, *supra* note 37.

⁴¹ Syracuse University created a tool, the Transactional Records Access Clearinghouse (“TRAC”), which examines records in Immigration Court case by case to determine how many people are represented by lawyers. These records provide information about representation by status, nationality, court location, and other variables. *See generally TRAC Immigration*, TRAC REPORTS (Oct. 16 2017), <http://trac.syr.edu/immigration/reports/485/> [hereinafter TRAC 2017 Report].

⁴² Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PENN L. REV. 1, 9 (2015).

⁴³ TRAC 2017 Report, *supra* note 41.

⁴⁴ *Id.*

⁴⁵ Over 43,000 unaccompanied children lacked counsel according to latest numbers. Syracuse University reported 20,691 unaccompanied children with attorneys and 43,030 without. *TRAC Immigration*, TRAC REPORTS (Nov. 25, 2014), <http://trac.syr.edu/immigration/reports/371/>.

⁴⁶ *Id.*

⁴⁷ Misyrlena Egkolfopoulou, *The Thousands of Children Who Go to Immigration Court Alone*, THE ATLANTIC (Aug. 21, 2018), <https://www.theatlantic.com>.

Doerrie reported in 2018 that she had 3,000 active cases.⁴⁸

Blocking Access to Courts

If civilization can be judged by its prisons, would it be fair to say that one way the legal system and the legal profession can be judged is by its courts?⁴⁹ If so, what is the verdict on the justness of the legal system and the legal profession, when millions of people each year are dealing with issues like divorce, domestic violence, eviction, foreclosure, immigration and other matters without legal assistance?⁵⁰

This is exacerbated by the fact that, not only do most people not have access to lawyers to assist them with legal matters, but the legal profession has a long history of actively working to prevent non-lawyers from helping people navigate their legal problems.⁵¹ In many states it is a criminal misdemeanor for non-lawyers to assist people with legal problems.⁵²

Although advocates raise the banner of client protection as the reason, they are effectively prohibiting non-lawyers from giving assistance to people navigating the legal system. However, the public whom they are supposedly protecting has for decades been quite willing to allow non-lawyers help those with legal problems.⁵³

com/politics/archive/2018/08/children-immigration-court/567490/.

⁴⁸ *Id.*

⁴⁹ Fyodor Dostoevsky is reported to have said that “[t]he degree of civilization in a society can be judged by entering its prisons.” THE YALE BOOK OF QUOTATIONS 210 (Fred Shapiro ed., 2006).

⁵⁰ As noted above, while a person does not have to go to court to get married, they do have to go to court to get divorced. If they cannot afford an attorney and they have to go to court, what are they to do other than try their best to represent themselves?

⁵¹ See generally Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STANFORD L. REV. 1 (1981). Rhode points to the Depression of the 1930s as the time when the legal profession started to investigate and block non-lawyers from assisting people with legal problems. *Id.* at 6-11.

⁵² *Id.* at 11-12.

⁵³ It is noteworthy that the ABA committee fighting against the unauthorized practice of law is named the “Standing Committee on Client Protection.” American Bar Association, Standing Committee on Client Protection, *2012 Survey of Unlicensed Practice of Law Committees* (2012), <https://www.americanbar.org>

In this context, the legal profession is not unlike other professions:

Professional organizations such as bar associations have always had a dual character: they are official spokesmen for the public aspirations of the profession to serve the ideals of the rule of law and universal justice, and often sponsors of programs to make the ideals effective; but they are primarily guilds whose aim is to protect and expand monopoly domains for their members' work, demand for their services, and their fees and profits. When those public aims and the guild's interests' conflict, the leaders and the rank-and-file of the bar tend, not surprisingly, to favor the guilds. Initiatives to make justice more accessible have been more likely, when they come, to originate with those marginal to or outside of the profession.⁵⁴

The profession effectively keeps a wall around the courts by prohibiting the unauthorized practice of law. Indeed, many states even prohibit lawyers licensed in other states from practicing law without meeting special requirements.⁵⁵ While paralegals are allowed in the legal profession, it is only as extensions of licensed lawyers.⁵⁶ Paralegals cannot, under these rules, establish an attorney-client relationship, appear in court on behalf of someone, or give legal advice.⁵⁷ A few states, however, allow certain non-lawyers to draft legal documents on their own.⁵⁸

/content/dam/aba/administrative/professional_responsibility/2012_upl_report_final.pdf [hereinafter 2012 ABA Committee on Client Protection Report]. As for the willingness of the public to use non-lawyer help, *see* Rhode, *supra* note 51, at 2-4.

⁵⁴ Gordon, *supra* note 4.

⁵⁵ MODEL RULES OF PROF'L CONDUCT r. 5.5 (AM. BAR ASS'N 2018).

⁵⁶ *See generally* American Bar Association, *Model Guidelines for the Utilization of Paralegal Services* (2018), https://www.americanbar.org/content/dam/aba/administrative/paralegals/lr_prllgs_modelguidelines.pdf.

⁵⁷ Frances P. Kao, *No, A Paralegal is not a Lawyer*, 16 BUSINESS LAW TODAY 11 (2007).

⁵⁸ 2012 ABA Committee on Client Protection Report, *supra* note 53.

Neglect of Community Justice

Access-to-justice approaches that assume the existence of a legal system that dispenses justice obscure the structural and unequal distribution of economic, social, and political power and foreclose opportunities for people to work toward a truly just society.⁵⁹ Community justice is usually not discussed or taught in law school and is infrequently discussed or practiced by members of the profession, yet the neglect of community justice is possibly one of the most important failures of the legal profession. In addition to the lack of lawyers assisting people and the professional ban on non-lawyers from helping people in the system, a lack of dedication to community justice issues is another important and missing element in the legal profession and system.

What is community justice? Think of it this way. If hundreds of thousands of people are in immigration courts and most are without lawyers, is the *only* problem lack of access to free lawyers by each individual? What about the millions of people every year who have individual, family, consumer, or housing legal problems which they have to either ignore or journey through on their own, because they cannot afford lawyers? What about all the other neighborhood, community, and organizational problems?

Consider also the following three facts and decide whether they are justice issues or not. Four in ten adults in the U.S.—tens of millions of people—do not have the resources to cover a \$400 unexpected expense, according to the Federal Reserve.⁶⁰ The same report notes that one fourth of non-retired adults have no retirement savings or pension at all.⁶¹ The Federal Deposit Insurance Corporation, moreover, reports that over 8 million households do not even have a bank account.⁶²

⁵⁹ Sameer Ashar & Annie Lai, *Access to Power*, DAEDALUS (2019), <https://www.amacad.org/publication/access-power>.

⁶⁰ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 2 (2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

⁶¹ *Id.* at 3.

⁶² 2017 *National Survey of Unbanked and Underbanked Households*,

Is the legal profession dedicated and working towards narrowing the justice gaps that these facts suggest? It is hard to argue that we are. This is not about encouraging and assisting lawyers to bring class action lawsuits or impact litigation, more of which are needed. This is about lawyers assisting groups and organizations to reclaim some of the power that has been unjustly taken from them.

Some call this “community lawyering,” others call it “movement lawyering.” The best definition is given by Charles Elsesser, a longtime community lawyer:

The central tenet of “community lawyering” is that social change comes about when people without power, particularly poor people or oppressed people, organize and recognize common grievances. Social change can only be lasting when it is led and directed by the people most affected. It is this organizational work, leadership development and power building that is and has been key. This is our theory of social change. It has been demonstrated over and over again in the civil rights movement, the workers’ rights movement, the housing movement and the immigrants’ rights movement. Community lawyering is supportive of this grassroots organizing and mobilization for social justice. Those involved in community lawyering understand that these organizing efforts may be the only real route to long-term social change.⁶³

By whatever name, it is when lawyers work as respectful partners with community organizations to bring about social change. This kind of lawyering involves “[a] mix of community organizing, litigation, policy and media advocacy, and direct-action tactics.”⁶⁴

FEDERAL DEPOSIT INSURANCE CORPORATION, <https://www.fdic.gov/householdsurvey/> (last visited March 17, 2019).

⁶³ Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOYOLA J. PUB. INTEREST L. 375, 384 (2013).

⁶⁴ Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1466 (2017). See also Jennifer Rosen Valverde, *Preparing Tomorrow’s Lawyers to Tackle Twenty-First Century Health and Social Justice*

Lawyers working this way, so as to bring about justice in our communities, are far too scarce.

What Needs to be Done: Modest Changes

If justice is really the goal, there are some modest changes that can be made right away. They come nowhere near all that needs to be done, but they are a start.

First, there has to be much more financial support for publicly funded civil legal services. The Legal Services Corporation, for example, has been on the frontlines of justice for millions of low-income people who rely on their services every year.⁶⁵ Current funding is significantly lower than it has been in the past.⁶⁶

Issues, 95 DEN. L. REV. 539, 564 (2018) (observing that “[c]ommunity-engaged lawyering is an approach that encompasses: collaboration and partnership with individuals and communities in the problem-solving process, from identifying and defining problems to development and implementation of strategies and solutions; sharing of knowledge by participants who learn from and teach each other; recognition that people and problems are inherently intertwined with context and cannot be considered in isolation; active engagement of individuals and communities to their capacity in self-help, self-determination, and collective action aimed at promoting social justice and change; and ongoing evaluation and analysis to evaluate and improve upon the collaborative process and outcomes”). Another—more limited—definition of community lawyering is “[t]he quest for equal justice involves so much more than increasing the supply of pro bono legal services. The strategy of Community Lawyering is to lessen the growing demand for legal services by teaching the community what more it can do for itself, capitalizing on its own informal problem-solving capabilities as much as possible before turning to attorneys.” David Domínguez, *Community Lawyering*, 17 UTAH BAR JOURNAL 31 (2004).

⁶⁵ Lee Rawles, *The Fight for Legal Services*, 103 ABA JOURNAL 68 (2017).

⁶⁶ Hilarie Bass, *Legal aid ensures equal justice for all: Congress must increase funding for the Legal Services Corporation*, THE HILL, (April 27, 2018), <https://thehill.com/blogs/congress-blog/judicial/385227-legal-aid-ensures-equal-justice-for-all-congress-must-increase>. See also Davida Finger, *50 Years after the “War on Poverty”: Evaluating the Justice Gap in the Post Disaster Context*, 34 BOSTON COLLEGE J. L. & SOCIAL SCIENCE 267 (2014). Others have also suggested changes to the ABA Model Rules of Professional Conduct, because they are set up on the assumption that the lawyer-client relationship is the traditional one, with a paying client and a paid lawyer. These rules can be modified to allow legal aid and pro bono lawyers more flexibility in providing legal services.

Second, nationwide data on the needs of those shut out of the legal system must to be collected, distributed, and analyzed on an annual basis.⁶⁷ It is a fact that there is no nationwide data on what actual legal needs there are, when and where they go unmet, or how the absence of legal assistance impacts individuals and society as a whole.⁶⁸ This data deficit can be addressed, but has not been so far.⁶⁹

Third, pro bono and low bono legal work have to become a much larger part of the profession. If justice is actually the mission of the legal profession, then these have to be key parts of every lawyer's work.⁷⁰

An American Bar Association survey of lawyers concluded that, while 81 percent believe pro bono service is important, just over half of attorneys provided any sort of pro bono. Lawyers as a whole

⁶⁷ Sandefur, *supra* note 10, at 459.

⁶⁸ *Id.*

⁶⁹ See generally Rebecca L. Sandefur, *Paying Down the Civil Justice Debt: Leveraging Existing National Data Collection*, 68 SO. CA. L. REV. 295 (2016).

⁷⁰ Pro bono is by no means the be-all of justice in the profession. Recall the observation by two Notre Dame Law Professors:

The burdens of poverty are fashioned in Wall Street offices faster and more effectively than legal services and public interest offices can lift them. If you spend the day on corporate takeovers and plant closings without thinking about the people you put out of work, you cannot make up for the harm that you do by giving a woman free legal advice in the evening when her unemployed husband takes out his frustration by beating her.

Thomas L. Shaffer & Robert E. Rhodes, Jr., *A Christian Theology for Roman Catholic Law Schools*, 14 U. DAYTON L. REV. 5, 18 (1988). Thus, it is good to remember Atticus Finch, stating: "I can't live one way in town and another way in my home." HARPER LEE, *TO KILL A MOCKINGBIRD* 267 (Fawcett Popular Library ed. 1962) (1960). See also Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 VALPARAISO U. L. REV. 879, 884 (1999) (expressing a similar take on the way the legal profession professes allegiance to values yet ignores them):

From any of these points of view, there is now no such thing as legal ethics. The moral claims American lawyers make on Law Day and in bar-journal pep talks are without ethical content. By which I mean that they cannot be discussed seriously in town. Neither duty-and-honor, nor the Bible, encourages discussion in town on how a biblical person goes about working as a lawyer. Duty and honor are made not to mean anything, and few lawyers pull anything concrete from the Bible—not in town.

provided on average 37 hours of pro bono service. The lawyers actually doing pro bono averaged 65 hours per person, but with 48 percent doing zero hours, the overall average is much lower. One in five lawyers said they have never done pro bono work.⁷¹

Likewise, low bono—affordable legal services usually provided by small firms or solo practitioners—needs to be dramatically expanded as well for the 80 million plus households who earn less than \$51,000 per year.⁷² There are also a few sliding scale law firms, but the profession could do much more to support these kinds of legal services.⁷³

In addition to the pro bono and low bono work done by lawyers in small firms, we must recognize that of the largest law firms, most of which also do pro bono work. Could they do a whole lot more? Absolutely. Take, for example the seven law firms nominated for The American Lawyer's Best Law Firm of the Year award.⁷⁴ Gottlieb Steen & Hamilton ranks 19th in Pro Bono with an average of 115 hours of pro bono work per lawyer.⁷⁵ Cooley ranks 74th with an average of 50 pro bono hours per lawyer.⁷⁶ Cravath, Swaine & Moore ranks 82nd with an average of 49.7 pro bono hours per lawyer.⁷⁷ Davis

⁷¹ *New comprehensive ABA report details lawyer involvement in providing pro bono services*, AMERICAN BAR ASSOCIATION NEWS (April 26, 2018), https://www.americanbar.org/news/abanews/aba-newsarchives/2018/04/new_comprehensiveab/; American Bar Association Standing Committee on Pro Bono and Public Service, *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers* (2018), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lb_pb_supporting_justice_iv_final.pdf.

⁷² Luz E. Herrera, *Encouraging the Development of "Low Bono" Law Practices*, 14 U. MD. L. J. OF RACE, RELIGION, GENDER & CLASS 1, 2 (2014).

⁷³ *See, e.g.*, COURT SQUARE LAW PROJECT, <http://www.courtsquarelaw.org/> (last visited March 17, 2019) (offering rates of \$80 to \$185 an hour depending on income).

⁷⁴ Ben Seal, *What does it take for a law firm to excel in today's rapidly evolving legal industry?*, THE AMERICAN LAWYER (Oct. 28, 2018), <https://www.law.com/americanlawyer/2018/10/28/law-firm-of-the-year-finalists-give-a-glimpse-of-the-industrys-future/>.

⁷⁵ Ben Seal, *The American Lawyer's National Pro Bono Rankings*, THE AMERICAN LAWYER (June 27, 2018), <https://www.law.com/americanlawyer/2018/06/27/the-american-lawyers-national-pro-bono-rankings/>.

⁷⁶ *Id.*

⁷⁷ *Id.*

Polk & Wardwell ranks 57th with an average of 53 pro bono hours per lawyer.⁷⁸ Hogan Lovells ranks 22nd with an average of 90 pro bono hours per lawyer.⁷⁹ Kirkland and Ellis, a global law firm just awarded Law Firm of the Year, proudly announced the firm completed 126,000 hours of pro bono work in 2017, 24,000 in immigration pro bono work.⁸⁰ The firm, which grossed over \$3 billion in 2017, has 1997 attorneys⁸¹ and ranks 31st with an average of 64 pro bono hours per lawyer.⁸² Finally, Paul, Weiss, Rifkind, Wharton & Garrison ranks 26th with an average of 100 pro bono hours per lawyer.⁸³

Pro bono and low bono are not the answer to the lack of justice, but they are part of the answer.

Fourth, if people are required by law to go to court to resolve matters like divorce, child support, domestic violence, consumer debt, housing, or immigration, then courts must welcome self-represented people and make the process people-oriented and just.⁸⁴ Our courts have to be overhauled to be user-friendly to the self-represented. Limited legal services by lawyers, such as telephone or in-person advice at courthouse help desks, help in filling out forms, and even online videos are provided in a number of states.⁸⁵ While advice alone appears to be of limited value, hands on assistance in completing legal forms has helped.⁸⁶

Instead of barriers to people handling their own legal matters, courts would be set up to guide people through the process and offer

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ KIRKLAND & ELLIS, <https://www.kirkland.com/social-commitment/pro-bono> (last visited March 17, 2019).

⁸¹ LAW.COM, <https://www.law.com/law-firm-profile/?id=173&name=Kirkland-%26-Ellis-LLP> (last visited March 17, 2019).

⁸² Seal, *supra* note 75.

⁸³ *Id.*

⁸⁴ This author is not naïve enough to think that working for equal access to courts will itself address injustice. Access to courts is quite different from access to justice. The legal system is definitely tilted towards preserving the rights of the affluent and powerful. Rebalancing the power between the powerful and the less powerful is rarely possible in court.

⁸⁵ Deborah L. Rhode, Kevin Eaton, & Anna Porto, *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 5 (2018).

⁸⁶ *Id.* at 13-14.

menus of options at each important stage of the process.⁸⁷ This means retraining judges, clerks, and other courthouse staff.⁸⁸ It would demand the use of plain language and simplified and streamlined legal processes.⁸⁹ It would involve reducing caseloads for courts and retraining judges to deal with non-lawyers, possibly even creating special courts for the unrepresented.⁹⁰ Judges would be trained in dealing with the self-represented and seeing themselves not as referees between lawyers, but as problem-solvers for the public.⁹¹ It would likewise mean training law students and lawyers in substantively different ways. Mediation, arbitration, and community courts are suggested by some.⁹²

Creative approaches to help people represent themselves in court are already being tried all over the country.⁹³ Remote assistance to the self-represented is being provided by telephone, websites, email, live chat, video conferencing, and text messaging.⁹⁴ Courts are developing proactive case management processes that actively direct the self-represented through the court process, simplifying court procedures for self-representation, and expediting resolution where

⁸⁷ See generally Sarah A. Sullivan, *What the Abacus Can Teach Us About Technology (And other valuable lessons about innovation and collaboration)*, 90 FLORIDA BAR JOURNAL 69 (2016).

⁸⁸ This is not a new suggestion. See generally Russell Engler, *And Justice for All – Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators and Clerks*, 67 FORDHAM L. REV. 1987 (1999).

⁸⁹ Some, however, question the idea that courts should be the branch of government for addressing the inevitable results of systems of inequality. See Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can't Solve Inequality*, DAEDALUS (2019), <https://www.amacad.org/publication/simplified-courts-cant-solve-inequality>.

⁹⁰ Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L. A. L. REV. 979, 1017-18 (2009).

⁹¹ It might even mean banning lawyers from representing one side when the other side has no counsel.

⁹² Buhai, *supra* note 90, at 990.

⁹³ AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/delivery_legal_services/resources/programs_to_help_those_with_moderate_income/ (last visited March 17, 2019).

⁹⁴ Self-Represented Litigation Network, *Executive Summary of the Resource Guide on Serving Self-represented Litigants Remotely*, 5-6 (2016), https://www.srln.org/system/files/attachments/Remote%20Guide%20Executive%20Summary%208-16-16_0.pdf.

matters are uncontested.⁹⁵ There are over five hundred self-help centers around the country assisting millions of people,⁹⁶ but these are often extremely overworked and studies on the assistance provided indicate that this model is often neither neutral, nor without its own problems.⁹⁷

These are modest changes, moreover, and they can be implemented right away.

What Needs to be Done: Transformational Solutions

Justice will not be served until those who are unaffected are as outraged as those who are.⁹⁸ If law alone is the goal, then the status quo is fine. If justice is the goal and the essence of the profession, however, significant transformation is essential. Actual solutions mean transforming law from an institution where the focus is on compensated lawyers into a practice where justice is the highest goal and everything in the system is built around providing the most justice to the most people.

I propose three changes that would transform the profession and the legal system and bring them much more into alignment with the cause of justice for all. The first and second proposals are intertwined and may be thought of as alternatives, but in order to bring about real justice, one or the other must be adopted.

First, the profession must abandon its prohibition on the unauthorized practice of law and help support and create new ways for non-lawyers to assist the self-represented:

⁹⁵ *Id.* at 7.

⁹⁶ American Bar Association, Standing Committee on Delivery of Legal Services, *The Self-Help Center Census: A National Survey*, 1 (2014), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_self_help_center_census.authcheckdam.pdf.

⁹⁷ See generally Elizabeth MacDowell, *Domestic Violence and the Politics of Self-Help*, 22 WM. & MARY J. WOMEN & L. 203 (2016) (providing an excellent analysis of the problems of courthouse help desks as a one-size-fits-all solution).

⁹⁸ Sometimes attributed to Benjamin Franklin, this seems to be a restatement of Plutarch's Life of Solon: "Being asked, namely, what city was best to live in, "That city," he replied, "in which those who are not wronged, no less than those who are wronged, exert themselves to punish the wrongdoers." PLUTARCH, *PARALLEL LIVES* VOL. I 455 (Loeb Classical Library ed. 1914).

Particularly at a time when lawyers are justifiably concerned about their public image, the bar itself has much to gain from abdicating its role as self-appointed guardian of the professional monopoly. Given mounting popular skepticism about unauthorized practice enforcement, prudential as well as policy considerations argue for greater consumer choice. Absent evidence of significant injuries resulting from lay assistance, individuals should be entitled to determine the cost and quality of legal services that best meet their needs. Where there are demonstrable grounds for paternalism, it should emanate from institutions other than the organized bar. A profession strongly committed to maintaining both the fact and appearance of impartiality in other contexts should recognize the value of more dispassionate decision-making in unauthorized practice enforcement. If, as bar spokesmen repeatedly insist, the “fight to stop [lay practice] is the public’s fight, it is time for the profession to relinquish the barricades.”⁹⁹

This means allowing skilled non-lawyer advocates to assist.¹⁰⁰ For example, hundreds of trained volunteer “navigators” successfully assisted thousands of unrepresented people in housing and consumer debt cases in New York City.¹⁰¹ It also means authorizing people to bring their pastor, social worker, sibling, or co-worker to help them advocate for the justice they seek.

⁹⁹ Rhode, *supra* note 51, at 99-100.

¹⁰⁰ There is data suggesting that trained law advocates provide legal assistance at the same level of competency as lawyers. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal*, 37 FORDHAM URBAN L. J. 37, 82 (2010).

¹⁰¹ REBECCA L. SANDEFUR & THOMAS M. CLARKE, ROLES BEYOND LAWYERS 3 (2016), http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf. These volunteers receive three hours of training and promise to provide 30 hours of service over the following three months. Nearly 700 volunteers provided assistance in the pilot project.

The legal profession must abandon its role in preventing lay advocates from assisting others, particularly in key areas where lawyers are not themselves providing assistance.¹⁰² This would involve the redesign of the basics of the law and procedures in areas of survival like family law, domestic violence, housing evictions and foreclosures, employment disputes, public benefits, health care disputes, small claims, and the immigration system. Lawyers might still be critical to big commercial disputes, insurance cases, constitutional law arguments, and other cases over a certain threshold. This will result in the de-lawyering of certain proceedings which have until now been the sole province of lawyers, despite the facts on the ground showing that lawyers are not assisting that many people in these areas today.

Allowing services to be provided by non-lawyers is already happening, although only in a few places and only on few matters.¹⁰³ This requires the modification of prohibitions on non-lawyers from practicing law.¹⁰⁴ In Colorado, non-lawyers can provide assistance in real estate, unemployment, immigration, and some alternative dispute proceedings.¹⁰⁵ In Washington state, non-lawyers called “limited license legal technicians” are allowed to help prepare court documents and perform legal research.¹⁰⁶

Secondly, as an alternative to removing the prohibition on unauthorized practice of law—or until the transition is made to a system where lawyers are not essential to individual legal matters involving basic human needs—there must be a publicly funded civil right to counsel in those matters.

A unanimously approved 2006 ABA resolution urged that

¹⁰² Rhode, *supra* note 51, at 99-100.

¹⁰³ A comprehensive review of this topic can be found at Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 *FORDHAM URBAN L. J.* 1259 (2014). See also Rhode et al., *supra* note 85.

¹⁰⁴ Rhode et al., *supra* note 85, at 19.

¹⁰⁵ Colorado Supreme Court, *Understanding Unauthorized Practice of Law Issues* (2014), <https://www.coloradosupremecourt.us/PDF/UPL/Understanding%20Practice%20of%20Law%20Issues.pdf>.

¹⁰⁶ Robert Ambrogi, *Who says you need a law degree to practice law?*, *WASHINGTON POST* (March 13, 2015), https://www.washingtonpost.com/opinions/closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4-aa1a-86135599fb0f_story.html?utm_term=.68bc97e3fc5c.

“[l]awyers be provided as a matter of right at public expense to low income persons...” where basic human needs involving shelter, sustenance, safety, health, or child custody are at stake, arguing that the “right proposed in this resolution is long overdue and deeply embedded in the nation’s promise of justice for all.”¹⁰⁷

The right to an attorney in civil proceedings, sometimes called “Civil Gideon,” is a great idea, but it is making miniscule progress.¹⁰⁸ Indeed, the criminal Gideon public defender system, which has been constitutionally mandated since 1963, is itself in crisis in many places across the nation.¹⁰⁹

The cities of New York,¹¹⁰ San Francisco,¹¹¹ and Newark¹¹² have enacted laws which guarantee legal counsel for low-income tenants facing evictions. California created publicly funded counsel for indigent parties in housing, child custody, and guardianship in 2016.¹¹³ Likewise, New Jersey’s Supreme Court decided that parents have a right to counsel in adoption case.¹¹⁴ A number of other states have established a limited right to counsel.¹¹⁵

¹⁰⁷ American Bar Association, House of Delegates, *Resolution 112A* (August 7, 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lisclaid_06A112A.authcheckdam.pdf.

¹⁰⁸ Tonya L. Brito, *The Right to Civil Counsel*, DAEDALUS (2019), <https://www.amacad.org/publication/right-civil-counsel>.

¹⁰⁹ See generally Stephen B. Bright and Sia M. Sanneh, *Fifty Years of Defiance and Resistance after Gideon v. Wainwright*, YALE L. J. 122 (2013).

¹¹⁰ See generally N.Y. City Human Resources Administration, Office of Civil Justice, *Universal Access to Legal Services: A Report on Year One of Implementation in New York City* (2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>.

¹¹¹ J. K. Dineen, *SF’s Measure F wins will give tax-funded legal help to tenants facing evictions*, SAN FRANCISCO CHRONICLE (June 5, 2018), <https://www.sfchronicle.com/politics/article/SF-Measure-F-to-give-tax-funded-legal-help-to-12970924.php>.

¹¹² NEWARK LEGISLATIVE RESEARCH CENTER, <https://newark.legistar.com/LegislationDetail.aspx?ID=3600177&GUID=706512AB-9068-4508-8193-1F1C1293ABE5&Options=&Search=&FullText=1> (last visited March 18, 2019).

¹¹³ Brito, *supra* note 108.

¹¹⁴ Adopted by J.E.V., 141 A.3d 254 (N.J. 2016). See NATIONAL COALITION OF A CIVIL RIGHT TO COUNSEL, http://civilrighttocounsel.org/major_developments/1016 (last visited March 29, 2019).

¹¹⁵ *NJ Supreme Court recognizes right to counsel for parents in adoption cases*, NATIONAL COALITION OF A CIVIL RIGHT TO COUNSEL (July 26, 2016),

The third proposal is for the legal profession to encourage, support, and place community or movement lawyering at the heart of our profession's quest for justice. This advocacy helps those unjustly deprived of power to reclaim their fair share. This lawyering recognizes that not all needs are individual needs and that, in fact, many individual justice needs can only be resolved on the community level. This mode of lawyering can help rebalance the power relationships in our communities and nation.

This kind of "[s]ocial change lawyering starts with the idea that history shows that systemic social change comes not from courts or heroic lawyers or law reform or impact litigation, but from social movements."¹¹⁶

This is not charity work. Community lawyering recognizes "[e]quality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion."¹¹⁷ This is *justice* work. It is also a kind of lawyering that is taking place now.¹¹⁸ It is working in law school clinics.¹¹⁹ It is happening in health

http://civilrighttocounsel.org/major_developments/1016 (explaining its adoption by J.E.V., 141 A.3d 254 (N.J. 2016)).

¹¹⁶ William Quigley, *Ten Questions for Social Change Lawyers*, 17 PUB. INT. L. REP. 204, 204 (2012).

¹¹⁷ *Legal Aid to Indigent Criminal Defendants in Philadelphia and New Jersey*, 107 U. PENN. L. REV. 812, 817 (n. 45) (quoting the late Justice Wiley Rutledge).

¹¹⁸ See generally Juliet Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009).

¹¹⁹ Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 HOWARD L. J. 99 (2015). For why law school clinics and social justice are so important, see Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995). A new text is coming out to help teach this lawyering. Steven Bender explains:

Law conspicuously promises Equal Justice through principled and accountable problem-solving, but group-wide social inequality has continued over centuries—as has social struggle. Neither resort to adjudication nor to democracy has broken through this challenge despite centuries of contestation and change. This history and its legacies give rise to today's Critical Challenge: Given all we now know about law's complex relationship to systemic injustice; how does one translate law's promise of Equal Justice into social realities for all? Systemic advocacy responds by

care.¹²⁰ People have used it combatting anti-Asian harassment.¹²¹ Some are using it to challenge structural injustices in immigration law.¹²² Lawyers are practicing this in indigenous communities¹²³ and Asian Pacific communities.¹²⁴ It is the essence of law for Black Lives and its thousands of lawyers and legal workers,¹²⁵ and it is the basis for legal support for The Poor Peoples Campaign.¹²⁶

The legal profession should be holding community lawyers up as justice role models, as it does for lawyers and judges and firms that do pro bono or innovative legal work.

Just as it encourages the teaching of ethics and professional responsibility, the legal profession should insist that education in community lawyering be widely available to law students and practicing lawyers as part of its commitment to justice.

centering in this expanded toolkit the importance of four “missing elements” in traditional legal analysis: groups, power, interests, and identities.

E-mail from Steven Bender (Jan. 1, 2019) (on file with author).

¹²⁰ See generally Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGISLATION AND PUB. POL’Y 35 (2004).

¹²¹ See generally Cecelia Chen & Andrew Leong, *We have the Power to Make Change: The Role of Community Lawyering in Challenging Anti-Asian Harassment at South Philadelphia High School*, 19 ASIAN L. J. 61 (2012).

¹²² Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 U.C.L.A. L. REV. 1464, 1466 (2017).

¹²³ See generally Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

¹²⁴ See generally Bill Ong Hing, *Nonelectoral Activism in Asian Pacific American Communities and the Implications for Community Lawyering*, 8 ASIAN PACIFIC AM. L. J. 246 (2002).

¹²⁵ LAW FOR BLACK LIVES, <http://www.law4blacklives.org/about-us/> (last visited March 18, 2019).

¹²⁶ FORWARD JUSTICE, <https://forwardjustice.org/forward-together-moral-movement> (last visited March 18, 2019).

Conclusion

Is the future of our profession one of dedication to law and its profitable practices? Or is our future one of dedication to justice for all? Currently, it is hard to argue that the profession is truly dedicated to justice. It is easier to argue that the profession is mostly in favor of law, seasoned with a little dash of justice.¹²⁷

With significant changes, however, our profession can orient itself towards the justice we profess. Individually and collectively as a profession we can take concrete steps to make the commitment to justice our reality. If so, the future of our profession will be justice!

¹²⁷ Gordon, *supra* note 4.