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Addressing Twin Crises in the Law: Underserved Clients and Underemployed Lawyers

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Addressing Twin Crises in the Law: Underserved Clients and Underemployed Lawyers

by James R. Holbrook & Jonathan R. Hornok

The legal profession faces two unprecedented crises: underserved middle-class clients and underemployed lawyers:

- Many poor, modest-means, and middle-class parties cannot afford to hire a lawyer.
- Many recent law school graduates cannot find full-time employment as lawyers.

The World Justice Project’s Rule of Law Index for 2012-2013, lists the United States as 19th out of 29 high income countries in having “access to civil justice.” World Justice Project, Rule of Law Index 2012-2013, at 27, 150. In 2010, Attorney General Eric Holder appointed Harvard Law Professor Larry Tribe to serve as a senior counselor in charge of a new Access to Justice Initiative. Tribe was asked to “suggest ways to improve legal services for the poor, find alternatives to court-intensive litigation, and strengthen the fairness and independence of our courts.” Charlie Savage, For an Obama Mentor, a Nebulous Niche, N.Y. Times, April 7, 2010, at A21. Tribe said, “The truth is that as a nation, we face nothing short of a justice crisis. It is a crisis both acute and chronic, affecting not only the poor but the middle class. The situation we face is unconscionable.” Laurence H. Tribe, Senior Counselor for Access to Justice, Speaks at the National Institute of Justice (June 14, 2010).

Former Chief Justice Michael Zimmerman highlighted the growing number of pro se litigants in his State of the Judiciary address in 1998, noting that “[t]he presence of large numbers of pro se litigants is fundamentally inconsistent with [the current structure of Utah’s court] system. Their lack of understanding of procedure and the law raises the prospect of the pro se litigant losing not on the merits of their case, but on technical grounds.” Chief Justice Michael Zimmerman, State of the Judiciary Address (Jan. 19, 1998), available at http://www.utcourts.gov/resources/reports/statejudiciary/state98.htm. In 2004, then Chief Justice Christine Durham expressed similar concerns with the lack of access to justice in Utah courts in her...

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It is unacceptable in a nation that claims to be founded on the rule of law that huge numbers of American citizens lack access to their justice system because they cannot afford legal services. Civil legal problems have devastating implications for people’s lives, and all of us lose when justice is unavailable for some.

Email from Justice Christine Durham, Utah Supreme Court, to Jonathan Hornok (July 25, 2013) (on file with author).

Pro se litigants do not know or understand the law, precedent, case evaluation, civil procedure, legal research, rules of evidence, courtroom conduct, or methods of dispute resolution such as negotiation and mediation. The ABA announced in July 2010 the results of a national survey of 1,200 state court judges, who said that the number of pro se litigants is increasing, particularly since the Great Recession; they do a poor job of representing themselves, they burden judges and clog court dockets; and they often lose in court. Terry Carter, Judges Say Litigants Are Increasingly Going Pro Se – at Their Own Peril, ABA JOURNAL (July. 12, 2010), http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se--at_their_own .

In a recent survey of the law school graduating class of 2012 conducted for the National Association for Law Placement, the nine-month post-graduation employment rate for law school graduates was 84.7% (lower than any class since 1994), but only 58% of employed graduates found jobs that were full-time, long-term, and require bar passage. Judy Collins & James Leipold, NALP Member Preview of Class of 2012 Employment and Salary Data 3, 10 (June 18, 2013) (unpublished presentation). This means that less than half of 2012 law school graduates actually entered traditional, full-time law practice.

In February 2013, members of the ABA’s Task Force on the Future of Legal Education called for changes in how law students are educated and how the profession is regulated. Ethan Bronner, A Call for Drastic Changes in Educating New Laywers, N.Y. TIMES, February 10, 2013, at A11. One controversial proposal is to shorten legal education to two years so law students can graduate with less debt and enter the profession more quickly. John J. Farmer Jr., Dean of Rutgers School of Law in Newark, proposed that law graduates should be required to have a year of practical experience modeled after medical school residency. John J. Farmer Jr., To Practice Law, Apprentice First, N.Y. TIMES, February 17, 2013, at A17. Whether or not these specific proposals are adopted, it is clear that both legal education and the practice of law must respond to the twin crises.

On Friday, September 27, 2013, the Utah State Bar and Utah Law Review OnLaw – the new Utah focused academic journal at the S.J. Quinney College of Law – will sponsor a CLE discussing these twin crises. Presenters include former Utah Supreme Court Chief Justices Michael Zimmerman and Christine Durham as well as distinguished members of the bench, the bar, and the academy.