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ADDRESSING TWIN CRISES IN THE LAW: UNDERSERVED CLIENTS AND UNDEREMPLOYED LAWYERS*

James R. Holbrook** & Jonathan R. Hornok***

The legal profession faces two unprecedented crises: underserved middle class clients and underemployed lawyers. On September 27, 2013, members of the Utah bench, bar, and academy gathered to discuss these crises at the *Twin Crises in the Law* CLE, sponsored by the Utah State Bar and *Utah Law Review OnLaw*. Papers from the CLE presenters are collected in this volume of *Utah Law Review OnLaw*.

I. THE TWIN CRISES

A. *Many Poor, Modest-Means, and Middle-Class Parties Cannot Afford to Hire a Lawyer*

The World Justice Project's *Rule of Law Index* for 2012–2013 lists the United States as nineteenth out of twenty-nine high-income countries in having “access to civil justice.”¹ In 2010, Attorney General Eric Holder appointed Harvard Law Professor Laurence 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 domestic courts.”² 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,

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¹ MARK DAVID AGRAST ET AL., THE WORLD JUSTICE PROJECT: RULE OF LAW INDEX 2012–2013, at 27, 150 (2013), available at http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf, archived at <http://perma.cc/8DAT-Z4AW>.

² Charlie Savage, *For an Obama Mentor, a Nebulous Legal Niche*, N.Y. TIMES (Apr. 8, 2010), <http://www.nytimes.com/2010/04/08/us/politics/08tribe.html>, archived at <http://perma.cc/T8AP-JD2Z>.

affecting not just the poor but the middle class. The situation we face is unconscionable.”³

Former Utah Supreme Court 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 [the] case, but on technical grounds.⁴

In 2004, then Chief Justice Christine Durham expressed similar concerns with the lack of access to justice in Utah courts in her State of the Judiciary address.⁵ When asked about this issue, Justice Durham recently said,

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.⁶

Pro se litigants do not know or understand the law, precedents, 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 twelve hundred state court judges, finding that pro se litigants are increasing in number, particularly since the Great Recession; do a poor job of representing themselves; burden judges and clog court dockets; and often lose in court.⁷

³ Laurence H. Tribe, *Senior Counselor for Access to Justice, Speaks at the National Institute of Justice*, U.S. DEP’T OF JUSTICE, (June 14, 2010), available at <http://perma.cc/63W7-E8QL>.

⁴ Chief Justice Michael D. Zimmerman, *State of the Judiciary Address*, UTAH ST. COURTS (Jan. 19, 1998), available at <http://www.utcourts.gov/resources/reports/statejudiciary/state98.htm>, archived at <http://perma.cc/VCH2-5XC5>.

⁵ Chief Justice Christine M. Durham, *State of the Judiciary Address*, UTAH ST. COURTS (Jan. 19, 2004), available at <http://www.utcourts.gov/resources/reports/statejudiciary/state04.htm>, archived at <http://perma.cc/P3ZN-635C>.

⁶ Email from Christine M. Durham, Justice, Utah Supreme Court, to author (July 25, 2013) (on file with author).

⁷ Terry Carter, *Judges Say Litigants Are Increasingly Going Pro Se—at Their Own Peril*, A.B.A. J. (July 12, 2010, 11:39 AM), http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se-at_their_own_, archived at <http://perma.cc/QZ5R-8CWJ>.

B. Many Recent Law School Graduates Cannot Find Full-Time Employment as Lawyers

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 58.3% were employed in jobs that are full-time, long-term, and require bar passage.⁸ 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.⁹ 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.¹⁰ John J. Farmer Jr., Dean of Rutgers School of Law in Newark, proposed that law graduates should be required to have two years of practical experience modeled after medical school residency.¹¹ 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.

II. THE CLE

On September 27, 2013, the Utah State Bar and *Utah Law Review OnLaw* sponsored the *Twin Crises in the Law* CLE in Salt Lake City, Utah.¹² The discussion proceeded as follows:

- Introduction by Curtis M. Jensen and Jonathan R. Hornok

⁸ Judy Collins, Director of Research, & James Leipold, Executive Director, NALP Member Preview of Class of 2012 Employment and Salary Data 3, 10 (June 18, 2013) (on file with the Utah Law Review) (PowerPoint presentation by the NALP based on surveys of recent law school graduates).

⁹ Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES (Feb. 10, 2013), <http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html>, archived at <http://perma.cc/8JE4-5Q3Z>.

¹⁰ Colleen Flaherty, *2 Years for Law School?*, INSIDE HIGHER ED. (Aug. 26, 2013), <http://www.insidehighered.com/news/2013/08/26/president-obama-calls-cutting-year-law-school>, archived at <http://perma.cc/9AUK-FFKA>.

¹¹ John J. Farmer Jr., Op-Ed., *To Practice Law, Apprentice First*, N.Y. TIMES (Feb. 17, 2013), http://www.nytimes.com/2013/02/18/opinion/to-practice-law-apprentice-first.html?_r=0, available at <http://perma.cc/VEK7-FS6G>.

¹² *Twin Crises in the Law*, ULAW TODAY (Sept. 27, 2013) [hereinafter *Twin Crises (ULaw Today)*], <http://today.law.utah.edu/?events=twin-crisis-in-the-law>, archived at <http://perma.cc/YAS5-MFY9>; *Twin Crises in the Law*, 26 UTAH B. J., no. 5, Sept.–Oct. 2013, at 28 [hereinafter *Twin Crises (Utah Bar Journal)*], available at https://www.utahbar.org/wp-content/uploads/2013/09/2013_edition_05_sep_oct.pdf, archived at <http://perma.cc/3NSA-6BUU>.

- Keynote by former Chief Justice Michael D. Zimmerman
- Underserved Clients panel moderated by Judge Royal I. Hansen with Mary Jane Ciccarello, Keith A. Call, and Rodney G. Snow
- Underemployed Lawyers panel moderated by Megan Green with Beth A. Hansen, Abby M. Dizon-Maughan, and Jacque M. Ramos
- Small group breakout session with large group report and discussion
- Professionalism and Economics: Benefit or Burden panel moderated by Judge William B. Bohling with Judge Royal I. Hansen, James R. Holbrook, Linda M. Jones, and Senator Stephen H. Urquhart
- Paths Going Forward panel moderated by former Chief Justice Michael D. Zimmerman with former Chief Justice Christine M. Durham, Curtis M. Jensen, Robert W. Adler, and Brett G. Scharffs
- Closing Remarks by Curtis M. Jensen and Jonathan R. Hornok¹³

Papers by the CLE presenters are collected in this volume of *Utah Law Review OnLaw*; the authors include Robert W. Adler,¹⁴ Keith A. Call,¹⁵ Jess Hofberger,¹⁶ James R. Holbrook,¹⁷ Curtis M. Jensen,¹⁸ Brett G. Scharffs,¹⁹ and Michael D. Zimmerman.²⁰

¹³ See *Twin Crises (ULaw Today)*, *supra* note 12; *Twin Crises (Utah Bar Journal)*, *supra* note 12.

¹⁴ Robert W. Adler, *Renewing the “Social Contract” Between Law Schools, Lawyers, and Society*, 2014 UTAH L. REV. ONLAW 19.

¹⁵ Keith A. Call, *Fixing Our Third World Access to Justice Problem*, 2014 UTAH L. REV. ONLAW 37.

¹⁶ Jess Hofberger, *Law Graduate Employment in Utah by the Numbers*, 2014 UTAH L. REV. ONLAW 43.

¹⁷ James R. Holbrook, *Reflections on the Future of Legal Education*, 2014 UTAH L. REV. ONLAW 53.

¹⁸ Curtis M. Jensen & Gregory H. Gunn, *Being a Leader in the Law: Reflections on Meeting the Responsibilities of the Legal Profession*, 2014 UTAH L. REV. ONLAW 63.

¹⁹ Brett G. Scharffs, *The Way Forward: Underserved Clients, Underemployed Lawyers—What Can Law Schools Do?*, 2014 UTAH L. REV. ONLAW 79.

²⁰ Michael D. Zimmerman, *It is Time to Burn the Boats: “Twin Crises in the Law” Keynote Address*, 2014 UTAH L. REV. ONLAW 97.