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FIXING OUR THIRD WORLD ACCESS TO JUSTICE PROBLEM

Keith A. Call*

America has a serious access to justice problem. According to one survey, the United States ranks in the bottom third of world nations when it comes to providing affordable access to civil justice. We need to change this.

This Article briefly reviews the access to justice problem. It then provides some specific steps individual lawyers can take to help remedy this problem.

I. WE HAVE THIRD WORLD ACCESS TO JUSTICE IN THIS COUNTRY

The World Justice Project recently completed its assessment of the extent to which ninety-seven world countries adhere to the rule of law. Its Rule of Law Index is an extensive, quantitative study based on forty-eight “rule of law” indicators designed to focus on actual practice, not just theory. Over ninety-seven thousand people and twenty-five hundred experts from around the world participated in the project.¹

In some areas, the United States scored very well. But in the category of “access to affordable civil justice,” the U.S. scored very poorly. The United States was ranked sixty-seventh out of ninety-seven countries, falling behind countries such as China, Dominican Republic, El Salvador, Ghana, and Iran.²

One translation of this is, if you are a poor or modest-income person in need of legal remedies, you are better off in one of those other sixty-six countries than you are in the United States.

In a June 2010 speech, former Harvard Law Professor Lawrence Tribe stated: “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.”³

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¹ See MARK DAVID AGRASST ET AL., THE WORLD JUSTICE PROJECT RULE OF LAW INDEX 2012–2013 1 (2013), available at http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf, archived at <http://perma.cc/GV3Y-S6LW>.

² *Id.* at 174–75.

³ See Dan Froomkin, *Access to Justice in U.S. at Third-World Levels, Says Survey*, HUFFINGTON POST (May 25, 2011, 7:00 PM), http://www.huffingtonpost.com/2010/10/14/access-to-justice-in-usa_n_762355.html, archived at <http://perma.cc/VFY4-SF2Z>.

II. LAWYERS ARE THE SOLUTION

It is easy for lawyers to become too focused on professional progression and the almighty billable hour. But focusing too much on the billable hour almost certainly contributes to the negative perception of lawyers in popular culture, as well as personal burnout. Indeed, it has been reported that lawyers rank number one on the unenviable list of occupations that are most depressed.⁴

One of the best ways I know to avoid legal burnout and to improve our image as lawyers has a lot to do with civility. The word “civility” has the same etymology as words like civilization, civilized, and civic.⁵ These words all come from the Latin root *civilis*, which means “citizen.”⁶

Lawyers, of all people, should be civic-minded citizens. In Judge Royal Hansen’s view, the unique skills that lawyers possess give them a unique ability to impact the community, and with that ability comes a duty to give service that should not be abdicated to others.⁷

There are many great examples all around us. In 1994, Debra Brown was sent to the Utah State Prison on a life sentence after being convicted of murder.⁸ She spent the next seventeen years of her life there.⁹ She was innocent, however.¹⁰ Debra would most likely still be in prison today except for the pro bono assistance of two Utah attorneys, Alan Sullivan and Chris Martinez.¹¹ After spending untold hours and personal sacrifice, Alan and Chris were able to overturn Debra’s wrongful conviction in 2011, developing in the process new law under a “factual innocence” statute.¹² Instead of spending the rest of her life wrongfully imprisoned, Debra is now a free citizen, gainfully employed and living happily with her family. Alan reports this experience was one of his most difficult but satisfying experiences as a lawyer.¹³

⁴ See Brent Hale, *Why Are So Many Lawyers Depressed?*, UTAH B.J. (Jan. 2, 2008, 5:31 AM), http://webster.utahbar.org/barjournal/2008/01/why_are_so_many_lawyers_depressed.html, archived at <http://perma.cc/9JCR-YRFZ>.

⁵ Civility Definition, ONLINE ETYMOLOGY DICTIONARY, http://www.etymonline.com/index.php?term=civility&allowed_in_frame=0, archived at <http://perma.cc/BD3A-AU74> (last visited Sept. 18, 2014).

⁶ *Id.*

⁷ Interview with Royal Hansen, Presiding Judge, Utah Third District Court, in Salt Lake City, Utah (Oct. 12, 2011).

⁸ See *State v. Brown*, 948 P.2d 337, 338 (Utah 1997).

⁹ Jim Dalrymple II, *Supreme Court Upholds Innocence of Debra Brown*, SALT LAKE TRIB. (July 13, 2013, 12:35 PM), <http://www.sltrib.com/sltrib/news/56585124-78/brown-court-state-innocence.html.csp>, archived at <http://perma.cc/RQK8-ZEYR>.

¹⁰ See *Brown v. State*, 2013 UT 42, ¶¶ 1–2, 308 P.3d 486.

¹¹ See Aaron Falk, *Law Day Honors The Legal System*, SALT LAKE TRIB. (Apr. 28, 2011, 8:56 PM), <http://www.sltrib.com/sltrib/news/51713092-78/law-award-public-utah.html.csp>.

¹² See *id.*

¹³ Telephone Interview with Alan Sullivan, Partner, Snell & Wilmer (Dec. 29, 2011).

For the past thirteen years, attorney Jay Kessler has spent nearly every Thursday afternoon away from his private law practice at a pro bono legal clinic, where he runs Catholic Community Services that provide free legal help to those who cannot afford legal services. “I’m not here to take cases. I’m not here to make money. I’m here to help people,” he said.¹⁴

Civic service need not be dramatic to be satisfying and meaningful. Some of my most memorable and rewarding experiences as a lawyer involve helping people who were frightened and intimidated by the prospect of small claims court.

In addition, civic service need not be limited to pro bono or reduced-fee legal services. There are countless ways to use one’s legal training and skills to get involved and serve the community. I greatly admire lawyers who are willing to run for political office on national, state, and local levels. School boards, citizen review boards, and numerous other organizations can greatly benefit from what legal professionals have to offer.

Volunteer civic service will not only help those you serve, but it will also improve the reputation of lawyers generally. It is also a guaranteed way of making sure your practice maintains purpose for you personally. And it can help change the problem of access to affordable justice for low and modest-income Americans.

Here are three specific ideas on how you can make a difference.

A. *Be a Private Guardian Ad Litem*

Every year, thousands of Utah children find themselves caught up in social and judicial systems they do not understand and cannot control. Such children are often caught in the middle of difficult family problems, including divorce, custody, and protective order proceedings.

Occasionally, a guardian ad litem is appointed to represent the interests of the child in domestic and other types of cases. The Utah Office of Guardian Ad Litem occasionally represents children in these dire situations; however, because of recent changes in the law, the need for help from private attorneys has become critical. As of July 1, 2014 (assuming the recent legislative changes stick), the Office of Guardian Ad Litem will not represent *any* children in *any* District Court cases.

Based on my conversations with the guardian ad litem’s office, as many as 300 private attorneys in Utah are needed to fill this new gap. Children in need of an independent voice will be unrepresented unless *you* step up.

¹⁴ Marjorie Cortez, *Local Lawyer Has Quietly Dispensed Free Legal Advice at Homeless Resource Center for 13 Years*, DESERET NEWS (Dec. 24, 2013, 1:26 PM), <http://www.deseretnews.com/article/865592989/Local-lawyer-has-quietly-dispensed-free-legal-advice-at-homeless-resource-center-for-13-years.html?pg=all>, archived at <http://perma.cc/F6V6-AZL9>.

By registering to serve as a private guardian ad litem, you can be appointed to represent the interests of children in District Court cases.¹⁵ The Court can order the parents to pay fees for your services. In my experience, you may also be asked to serve pro bono as needed. And, provided you perform in such capacity within the scope of your statutory and ethical duties, you are immune from civil liability that could result from your service.¹⁶

Here's how to get started: Log on to <http://www.utcourts.gov/specproj/casa/pgal>.¹⁷ You will find an application form and instructions on how you can help. Guardian ad litem work can be well suited to litigators, even if you do not have experience in this area of law. Training is provided for all who participate.

B. Provide Modest Means Legal Assistance

There are many people in our community who make too much money to qualify for pro bono programs, but do not make nearly enough money to pay normal lawyer rates. This includes your friends and neighbors who are schoolteachers, nurses, first responders, and, well, even some lawyers. These people are not immune to legal problems, yet the courts are often inaccessible to them because of cost.

The notion that State Street is inaccessible to the man and woman on Main Street and your street is something we all need to own and change. The Utah Bar is doing that through the recently launched Modest Means program,¹⁸ which will not work without your help.

Modest Means is a referral program that matches persons of “modest means” to lawyers who agree to provide legal assistance on a reduced fee basis. The reduced fees are usually in the range of fifty to seventy-five dollars per hour, depending on the client’s income level.¹⁹ The range of legal problems and need for help is nearly limitless, but you can limit the types of cases you take based on your competency. What a great opportunity to help real people with real problems.

Here's how to get started: Log on to <http://www.utahbar.org/volunteer>²⁰ and follow the links to learn more about the Modest Means Program. There is a simple registration process that is available online.

¹⁵ *Office of Guardian ad Litem*, UTAH STATE COURTS, <http://www.utcourts.gov/specproj/galcasa.htm>, archived at <http://perma.cc/N4J8-PR73> (last visited Sept. 18, 2014).

¹⁶ See UTAH CODE ANN. § 78A-6-902(7) (West 2013).

¹⁷ Archived at <http://perma.cc/U2TD-8JPQ>.

¹⁸ *Modest Means Lawyer Referral Program*, UTAH STATE BAR, <https://www.utahbar.org/modest-means-lawyer-referral-program/>, archived at <http://perma.cc/5MJA-GJC7> (last visited Sept. 18, 2014).

¹⁹ *Id.*

²⁰ Archived at <http://perma.cc/V64Q-N4CX>.

C. Get Involved in Pro Bono Work

Then there is good, old-fashioned pro bono work for people in need. We all understand the “business of law” and the need to make money and provide for our families. But I suggest that if you are not currently handling at least one matter for the pure purpose of serving someone who needs your help, make time now to make a difference.

Pro bono cases are easy to get. They are now even easier to find than ever with the help of the Utah Bar’s Pro Bono Commission, newly formed in 2012.²¹ The Pro Bono Commission’s goals are to recruit, train, retain, and reward attorneys for their pro bono efforts.²² More specifically, the Pro Bono Commission seeks to increase the number of pro bono attorneys. Step up and be one of them.

Here’s how to get started: Log on to <http://www.utahbar.org/volunteer/>²³ and follow the links for the Pro Bono Commission. You can also contact the Access to Justice Department at (801) 297-7027 or email probono@utahbar.org.

²¹ *Utah State Bar Pro Bono Commission*, UTAH STATE BAR, <https://www.utahbar.org/public-services/pro-bono-commission/>, archived at <http://perma.cc/ZF3H-WT4E> (last visited Sept. 18, 2014).

²² *See id.*

²³ Archived at <http://perma.cc/V64Q-N4CX>.