

TWENTY-FOURTH ANNUAL BRENDAN BROWN LECTURE

APRIL 6, 2017

**FOLLOW THE NATURAL LAW: PROVIDE
ACCESS TO JUSTICE, IMPROVE SOMEONE
ELSE’S LIFE (AND YOUR OWN)**

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I. INTRODUCTION

Initially, I want to thank the faculty and the deans of the Loyola University New Orleans College of Law not only for inviting me to give this Lecture today but also for shining the light on access to justice, which should and must be one of the most important issues for all of us in the legal community. I also want to thank Professor James Viator for his kind introduction and for everything he did to coordinate and organize this event today.

Finally, I thank all of you for being here, especially the members of our law school faculty and our law students, since

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papers are becoming due and exams are upcoming. This is fortunately the second time this year I have had the opportunity to speak to the law students regarding access to justice issues. More specifically, I came on campus in January to speak to the first-year class regarding our Adams and Reese/Louisiana State Bar Association Access to Justice Developing Leadership Internship Program.

II. A LECTURE IN HONOR OF DR. BRENDAN BROWN

Let me say a few words about Dr. Brendan Brown. He was at the tail end of his wonderful career when I was in law school. All of us students knew Dr. Brown. He was a former dean of the Catholic University Law School, a philosopher, a natural law scholar, and a law professor at Loyola for many years. However, what everyone really knew Dr. Brown to be was a legend in the Moot Court world. He coached Loyola to the national championship in 1974 in New York City. That was fantastic!

Knowing the excellent national and local reputation Dr. Brown enjoyed, it is indeed an honor to be here today to give this Lecture named after him. My Lecture will focus on four main areas: (1) the significant access to justice crisis in our country and in Louisiana; (2) some of the reasons why we have reached this crisis stage; (3) what is being done nationally and in Louisiana to address this crisis; and (4) my own personal recommendations as to what actions we can take going forward, given our various roles and capacities, to provide more citizens with meaningful access to justice, which will at the same time help many of our young lawyers develop and grow professionally and personally.

This Lecture today is timely in light of the ongoing access to justice crisis, nationally and locally, and with other recent events that have highlighted this crisis.

III. ACCESS TO JUSTICE: A NATIONAL CRISIS

There should be no dispute whatsoever that we have a significant access to justice crisis in our country. But how many of us would even mention access to justice if asked to list our country's top ten principal crises?

Any discussion on access to justice must start with what is generally meant by justice, access to justice, and meaningful access to justice. For me, *justice* essentially means having an equal, level playing field in regard to our legal system. No one

should have a home field advantage just because of who you are or whom you know. A self-represented litigant must be treated the same as a Fortune 500 company. *Access to justice* is simply having the opportunity to have that equal, level playing field. Furthermore, in my opinion, *meaningful access to justice* essentially occurs when one is represented by competent counsel.

I want to focus on three groups which have recognized this national meaningful access to justice crisis and have taken the lead in starting a much-needed dialogue. The first group is the American Bar Association (ABA). In 2014, under the leadership of ABA President William Hubbard and New Orleans's own Judy Perry Martinez, the ABA set up a blue-ribbon commission to study the access to justice crisis, make findings, and provide recommendations.¹ After two years of work, the ABA published its report in 2016, which was entitled, *The Future of Legal Services in the United States*. In that report, the ABA commission estimated that 80% of the poor and those of moderate means in our country were without *meaningful access* to our justice system.² When we speak of those of modest means, we are basically talking about the working poor; namely, those who do not qualify for free pro bono legal services but cannot afford a lawyer at market rates.

When a person cannot afford a lawyer, that person's legal needs often go unaddressed until it is too late; this can potentially lead to adverse effects. For example, after Hurricane Katrina, the Federal Emergency Management Agency (FEMA) denied claims brought by those who could not prove legal title to their property, which had simply been passed on from one generation to another without a proper legal transfer.³ That was devastating for many.

The second group shining a light on the access to justice crisis is the American College of Trial Lawyers, which is one of the most well-respected legal organizations in the country. At its

1. A.B.A. Comm'n on the Future of Legal Servs., *Report on the Future of Legal Services in the United States*, A.B.A. 1-2 (2016), <http://abafuturesreport.com/2016-fls-report-web.pdf>.

2. *Id.* at p. III.

3. See Jonathan P. Hooks & Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 CAL. W. L. REV. 21, 51-54 (2006); see Richard Kluckow, *The Impact of Heir Property on Post-Katrina Housing Recovery in New Orleans* (2014) (M.A. dissertation, University of Colorado) (on file with ProQuest L.L.C.), https://media.proquest.com/media/pq/classic/doc/3580644221/fmt/ai/rep/NPDF?_s=zUEkMbSsSUqHZrm7vkXcBpSGJdk%3D.

annual meeting in Philadelphia in September 2016, the American College of Trial Lawyers put together an all-star panel to discuss our access to justice crisis.⁴ Judge Neil Gorsuch, who will soon be confirmed as our next U.S. Supreme Court Justice, was one of the panel members. One of the other panel members was a jurist from the United Kingdom. The discussion focused on what worked and did not work from an access to justice standpoint in both the United States and in the United Kingdom. In its recently released March 2017 journal, the American College of Trial Lawyers featured a picture of the panelists on the cover and an article capturing the essence of that access to justice discussion.

The third group importantly joining the ongoing access to justice dialogue is the Conference of Chief Justices of the State Supreme Courts. In 2015, the conference, along with the Conference of State Court Administrators, passed a joint resolution, setting an “aspirational goal of 100 percent access to effective assistance [of counsel] for essential civil legal needs.”⁵ The making of that statement was one of the most important steps to take. However, the key question that arises is how do we use real action to make that aspirational goal a reality?

Speaking of real action, the Conference of Chief Justices of the State Supreme Courts recently put some significant force behind its 2015 aspirational goal when it recommended that each chief justice or chief judge of the highest court in each state send a letter to each member of its particular federal Congressional delegation denouncing the Trump Administration’s proposed 2018 budget. President Trump’s 2018 budget called for zero funding for the Legal Services Corporation, which is the major funding source for civil legal aid across the country, including Louisiana. Sixty million Americans or 21% of our U.S. population qualify for free civil legal services from funding provided by the Legal Services Corporation.⁶ To use one of President Trump’s own words, this proposed budget would be a “disaster” for millions of Americans.

4. *Three Panels of British Delegates to the 2016 Legal Exchange*, AM. C. OF TRIAL LAWS. J. 1, 66 (2017).

5. Conference of Chief Justices & Conference of State Court Administrators Resol. 5, 2015 Annual Meeting (2015), http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_final.ashx.

6. See A.B.A. Comm’n on the Future of Legal Servs., *Report on the Future of Legal Services in the United States*, A.B.A. 12–13 (2016), <http://abafuturesreport.com/2016-fls-report-web.pdf>.

On March 30, 2017, our own Louisiana Supreme Court Chief Justice, Bernette J. Johnson, sent an excellently worded, strong letter of support for continued funding of the Legal Services Corporation to all of Louisiana's federal Congressional members. In addition, within the past few weeks the ABA, the American College of Trial Lawyers, approximately 150 major law firms, and many others across the country have sent letters or held meetings with members of Congress in support of continued civil legal aid funding through the Legal Services Corporation.⁷

Just a few days ago, on April 3, 2017, there was an article on NOLA.com regarding this funding issue, wherein Laura Tuggle, Executive Director of Southeast Louisiana Legal Services, spoke to the adverse effect this proposed defunding of civil legal aid would have on Louisiana's poor.⁸ Unfortunately, as we all know, sometimes it takes a crisis to get everyone's attention. That is apparently what has now happened in the access to justice world both nationally and locally.

IV. THE IMPACT ON LOUISIANA CITIZENS

Let us first talk about the crisis on the civil side. In its 2016 released Asset Limited, Income Constrained, Employed (ALICE) report, the Louisiana Association of United Ways indicated that Louisiana has a 19% poverty rate (approximately 900,000 Louisiana citizens live in poverty),⁹ compared to the national average of 16%.¹⁰ Louisiana is the third poorest state in the country.¹¹ In addition, the ALICE Report indicated that 23% of

7. American College of Trial Lawyers Issues Statement on the Defunding of Legal Services Corporation: Defunding LSC Would Reduce Access to Justice to Most Endangered Citizens, AM. C. OF TRIAL LAW. (Mar. 22, 2017), <https://www.actl.com/library/statement-defunding-legal-services-corporation-lsc>; ABA President Submits Testimony Supporting LSC Funding to U.S. Senate Subcommittees, A.B.A. (May 17, 2017), https://www.americanbar.org/news/abanews/aba-news-archives/2017/05/aba_president_submit.html.

8. Richard Rainey, *Legal Aid for Louisiana Poor on Chopping Block in Trump's Budget*, NOLA.COM (Apr. 3, 2017, 11:51 AM), http://www.nola.com/politics/index.ssf/2017/04/legal_aid_for_louisiana_poor_o.html.

9. United Way ALICE Report for Louisiana 2016 Update, LOUISIANA ASS'N OF UNITED WAYS (2016), http://www.unitedwayalice.org/documents/16UW%20ALICE%20Report_LAUpdate_3.21.17_Lowres.pdf.

10. See Marta-Ann Schnabel, *A Long History of Service Gets Renewed Energy: Louisiana's Access to Justice Commission is a Collaboration of the Supreme Court, the LSBA and the LBF*, 64 LA. B. J. 260, 260 (2016).

11. See, e.g., Natasha Bertrand, *The 10 Poorest States in America*, BUS. INSIDER (Dec. 17, 2014, 12:00 PM), <http://www.businessinsider.com/the-10-poorest-states-in-america-2014-12>.

Louisiana households fall into the modest means or working poor category.¹² So, about 42% of Louisiana households are classified as either poor or working poor. Just recently, NOLA.com reported that over 50% of New Orleans households are classified as either poor or working poor.¹³

In the December 2016/January 2017 Louisiana Bar Journal, the Louisiana State Bar Association (LSBA) reported that about 225,000 of our low-income Louisiana citizens experience a civil legal problem each year, yet only about 40,000 get legal help.¹⁴ Therefore, we have approximately 185,000 Louisiana citizens each year who receive no legal help or representation whatsoever for their civil legal needs. On top of everything else, Louisiana is only one of four states in the country that provides zero funding for civil legal aid.¹⁵

Things are even worse on the criminal side. In 2017, the ABA and the Baton Rouge-based accounting firm Postlethwaite & Netterville released a study reporting that we need 1,769 full-time criminal indigent defense lawyers in Louisiana, yet we only have about 360.¹⁶ Therefore, we are about 1,400 lawyers short, or 80% below, where we should be in regard to indigent criminal defense lawyers.

There never seems to be adequate money for criminal indigent defense in Louisiana. That is because politicians want to get elected and reelected. Advocating for enhanced funding for criminal indigent defense will not get anyone elected in Louisiana these days. The result of this significant lack of funding problem is that indigent defendants sit in jail for months waiting for court-appointed lawyers to represent them. This is in clear violation of the U.S. Supreme Court's 1963 decision in *Gideon v. Wainwright*, which granted a person facing prison or a loss of physical liberty the constitutional right to counsel.¹⁷

12. United Way ALICE Report for Louisiana 2016 Update, *supra* note 9.

13. Jennifer Larino, *More Than Half of New Orleans Households Are Struggling to Get By: Report*, NOLA.COM (Apr. 6, 2017, 10:24 AM), http://www.nola.com/business/index.ssf/2017/04/new_orleans_poverty_households.html.

14. Schnabel, *supra* note 10, at 260.

15. *Id.*

16. The Louisiana Project: A Study of the Louisiana Defender System and Attorney Workload Standards, A.B.A. 2 (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.authcheckdam.pdf.

17. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Some of you may be wondering whether there is a federally mandated right to counsel in civil cases. The answer is no. In its 1981 decision in *Lassiter v. Department of Social Services*, the U.S. Supreme Court said that there was no federal constitutional right to counsel in civil cases, leaving each state to decide whether there is a right to appointed counsel in certain civil cases.¹⁸ In Louisiana, indigent parents and their children are provided court-appointed, pro bono counsel in “child in need of care cases,” wherein a person’s parental rights could be terminated.¹⁹

We have many excellent, dedicated civil legal aid lawyers and criminal indigent defense lawyers in Louisiana. I work with a number of them on a regular basis. They are over-worked, underpaid, and cannot keep up with the legal needs of our poor. Overall, the very sad truth, which results from our access to justice crisis in Louisiana, is that our justice system simply does not work on either the civil or criminal side for thousands of our poor and working poor Louisiana citizens.

V. ACCESS TO JUSTICE AS A FUNDAMENTAL RIGHT

It is appropriate to have this access to justice lecture at Loyola University New Orleans College of Law in connection with the Brendan Brown Lecture Series. In general, a law school is an excellent place to discuss access to justice. As a legal community, we need to educate, motivate, and inspire our next generation of lawyers and judges to promote access to justice. To the law students present today, I say: Our poor and working poor citizens need your technological expertise, your creativity, and your enthusiasm for doing good for others. Have we not all said at some point that we wanted to become a lawyer so we could help others?

Our law students and our young lawyers need to be a part of our society’s access to justice discussion. Unfortunately, they have not been invited to participate as they should have been. This needs to change immediately. Specifically, Loyola College of Law is a well-recognized leader in social justice and has been for decades. In addition, Loyola’s Brendan Brown Lecture Series focuses on the natural law, which according to Saint Thomas

18. *Lassiter v. Dep’t of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18 (1981).

19. See *Child in Need of Care*, LA. BAR FOUND., <http://www.raisingthebar.org/programs-and-projects/child-in-need-of-care> (last visited May 19, 2017).

Aquinas, has as its first and most fundamental principle, “Good is to be done and pursued and evil avoided.”²⁰ Clearly, there is no greater good we can do, as members of the legal profession, than ensure meaningful access to justice for all, especially during this time in our country and in our state when so many of our poor and working poor who want a lawyer cannot afford one.

Access to justice is a fundamental right—an essential part of the natural law upon which our country was formed. Our Declaration of Independence, our United States Constitution, and our Pledge of Allegiance all speak of justice for all. The last line of our Pledge of Allegiance is “one nation under God, indivisible, with liberty and justice for all.” In addition, access to justice is specifically recognized in the constitutions of thirty-nine states, including Louisiana’s.²¹

In 1907, in *Chambers v. Baltimore & Ohio Railroad Co.*, the U.S. Supreme Court agreed unanimously that access to justice is a fundamental right.²² Access to justice is part of our country’s natural law.

In August of 1976, former president of the ABA and the late Justice Lewis Powell said: “Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”²³

In his 1960 publication, Dr. Brendan Brown described natural law as “an ideal by which legal systems should be

20. ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE: COMPLETE SET I-II*:94:2 (The Aquinas Institute ed. 2012).

21. See LA. CONST. ANN. art. 1 § 22 (“All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”).

22. *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907) (“In the decision of the merits of the case there are some fundamental principles which are of controlling effect. The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens.”).

23. Justice Lewis F. Powell, Address at Legal Services Corporation: A Presidential Program of the Annual Meeting of the American Bar Association (Aug. 10, 1976).

guided.”²⁴ I ask you: How does today’s justice system measure up to the natural law when so many citizens are denied meaningful access to justice on a daily basis? Unfortunately, across our country today, courts regularly deal with an ever-increasing number of self-represented litigants who come to court with little understanding of their rights and the judicial process.

VI. HOW WE REACHED THIS CRISIS

I offer the following as some of the reasons we are facing an access to justice crisis in our country and more specifically, Louisiana:

- (1) The economic gap between the rich and the poor continues to widen each year in our country and in our state.²⁵
- (2) More and more people are falling into the working poor or modest means category—barely able to make ends meet day to day. They become self-represented litigants because they cannot afford a lawyer to help them.
- (3) Louisiana is in the bottom 25% of states for overall access to justice involvement according to the National Center for Access to Justice,²⁶ housed at the Fordham University College of Law, which looks at such things as how many civil aid lawyers are available for every 10,000 poor citizens, what services exist for self-represented litigants, and what tools are available to assist people who do not speak English or

24. BRENDAN BROWN, *THE NATURAL LAW READER IX* (1960).

25. Heather Long, *U.S. Inequality Keeps Getting Uglier*, CNN (Dec. 22, 2016), <http://money.cnn.com/2016/12/22/news/economy/us-inequality-worse/index.html> (“Today, the top mega wealthy -- the top 1% -- earn an average of \$1.3 million a year. Its more than three times as much as the 1980s, when the rich ‘only’ made \$428,000, on average Meanwhile, the bottom 50% of the American population earned an average of \$16,000 in pre-tax income in 1980. That hasn’t changed in over three decades.”); *Louisiana Has Large Wealth Gap Between Rich, Poor: Report*, NOLA.COM (Dec. 15, 2016, 7:01 PM), http://www.nola.com/politics/index.ssf/2016/12/louisiana_has_large_wealth_gap.html (“[The Center on Budget and Policy Priorities]’s report released Thursday says the top 5 percent of Louisiana households have an average income 14 times larger than the bottom 20 percent of households – and an average income nearly five times larger than middle-income households. The poorest 20 percent of residents have an average income of \$16,900, compared to \$238,600 for the richest 5 percent, according to data.”).

26. *Overall Scores and Rankings*, JUSTICE INDEX, <http://justiceindex.org/2016-findings/findings/> (last visited May 19, 2017).

have disabilities.

- (4) Access to justice for the poor and working poor is not a priority item or is a very low priority item for many national and Louisiana legislators, lawyers, and citizens. As I said earlier, advocating for increased funding for the poor will not help you get elected to public office these days.²⁷
- (5) Funding for civil legal service providers always appears to be under attack nationally or is non-existent, as is the case in Louisiana.
- (6) Less civil legal aid funding results in less civil public interest lawyers and less criminal indigent defense lawyers when our society, nationally and locally, needs more.
- (7) Private law firm lawyers are under constant pressure to bill more chargeable hours, thus, leaving little time for legal pro bono work.²⁸
- (8) Too few law firms and companies actively encourage legal pro bono work by their lawyers. Too few law firm leaders set the example and do pro bono work themselves. Too few law firms set internal mandatory pro bono goals or, if they do have goals, fail to enforce them.
- (9) Most lawyers are not really interested in or experienced in family law matters or immigration—

27. Nabanita (Neeta) Pal, *Cuts Threaten Civil Legal Aid*, BRENNAN CTR. FOR JUSTICE AT N.Y.U. (Apr. 22, 2011), <http://www.brennancenter.org/analysis/cuts-threaten-civil-legal-aid> (“Congress has cut back on federal funding in the latest spending compromise – and threatens to inflict deeper cuts in the next budget cycle. Making matters worse, these federal cuts occur against the backdrop of plummeting contributions from other sources.”); *Standing Up For Justice*, THE PRO BONO PROJECT (Apr. 24, 2017), <http://probono-no.org/news-highlights3/2017/4/12/standing-up-for-justice?rq=standing%20up%20for%20justice> (“For the last six years, civil legal aid organizations in Louisiana sustained a significant drop in state and federal funding while the poverty rate has increased,’ explained the incoming Louisiana Bar Foundation President Valerie Bargas.”).

28. Justice Stephen G. Breyer, *Foreword* to ABA COMMISSION ON BILLABLE HOURS REPORT, A.B.A., at vii (2002) (“How can a practitioner undertake pro bono work, engage in law reform efforts, even attend bar association meetings, if that lawyer also must produce 2100 or more billable hours each year, say sixty-five or seventy hours in the office each week. The answer is that most cannot, and for this, both the profession and the community suffer.”).

two of the greatest legal pro bono needs we have in Louisiana.²⁹

- (10) There are hardly any forums, like the one today, where our legal community can come together to understand, discuss, and then act on the access to justice needs of others.
- (11) We have not used technology to the fullest extent possible in dealing with our access to justice issues. That is most likely because my generation does not know how to utilize technology in this way.
- (12) There is unfortunately a passive indifference to the needs of the poor among many citizens in general and many legislators and lawyers in particular. Pope Francis said: “[I]ndifference has been globalized; why should I care what happens to others as long as I can defend [my own]?”³⁰ Indifference to the access to justice needs of others clearly violates the essence of our natural law, that “good is to be done and pursued,” and runs contrary to our professional responsibility as members of the legal community.
- (13) The poor, the needy, and the underdogs in our society have no real voice in legislative and judicial systems and processes.
- (14) According to the fiscal year 2015–2016 statistics kept by the LSBA, the reported civil legal pro bono hours donated by lawyers in Louisiana for that year only averaged about five hours per lawyer.³¹ Even if only 50% of the civil legal pro bono time donated was actually reported, we are most likely still looking at approximately 17,000–18,000 actively practicing

29. See Theresa Amato, *Put Lawyers Where They're Needed*, N.Y. TIMES (June 17, 2015), <http://nytimes.com/2015/06/17/opinion/put-lawyers-where-theyre-needed.html>; Sandhya Dirks, *With or Without Overhaul, Immigration Lawyers in Short Supply*, NAT'L PUB. RADIO (NPR radio broadcast Apr. 29, 2013, 2:45 PM), <http://www.npr.org/2013/04/29/179019214/with-or-without-reform-immigration-lawyers-in-short-supply>.

30. Pope Francis, Address to the Participants in the World Meeting of Popular Movements (Oct. 28, 2014), http://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141028_incontro-mondiale-movimenti-popolari.html.

31. Interview with Monte T. Mollere, Program Director, Louisiana State Bar Association Access to Justice Program, in New Orleans, La. (Apr. 4, 2017).

lawyers averaging, at best, ten legal pro bono hours per year. The ABA's Model Rules of Professional Conduct and Louisiana's Rules of Professional Conduct both set an aspirational goal of fifty legal pro bono hours for each lawyer per year.³²

- (15) The highly regarded and well-recognized *American Lawyer* study each year ranks the top 200 firms in the country based upon a number of categories. One of the categories is pro bono hours. The 2016 study showed that the first 100 most profitable firms in the country only had about 50% of their lawyers spend at least twenty hours per year on legal pro bono matters.³³ It also showed that a small number of lawyers in those firms put in the majority of the overall legal pro bono hours. That is most likely also the case in Louisiana; namely, a small number of lawyers do the overwhelming majority of the pro bono work. For those law firms ranked from 101–200, only one third of their lawyers donated at least twenty legal pro bono hours per year.³⁴ These top 200 firms are some of the richest in the country in terms of profits.
- (16) We have too many “takers” and not enough “givers” in our society today. In Adam Grant's book, *Give and Take: Why Helping Others Drives Our Success*, he discusses the differences between givers and takers.³⁵ More specifically, a giver will help those in need without expecting or wanting anything in return because it is the right thing to do. According to the 2013 ABA's Pro Bono Survey, lawyers do legal pro bono work because they feel it is the right thing to do.³⁶ There is an ongoing 2017 survey, and my best

32. MODEL RULES OF PROF'L CONDUCT r. 6.1 (A.B.A., 2016); LA. RULES OF PROF'L CONDUCT r. 6.1 (La. State Bar Ass'n 2016).

33. *The 2016 Am Law 100: Growth Slows for Big Law*, AM. LAW. (Apr. 25, 2016), <http://www.americanlawyer.com/current-year/id=1202489912232/The-2014-Am-Law-100-The-Super-Rich-Get-Richer>.

34. *The 2016 Am Law 200: Our Exclusive Report*, AM. LAW. (May 23, 2016), <http://www.americanlawyer.com/current-year/id=1202494427064/The-2014-Am-Law-200-Our-Exclusive-Report>.

35. ADAM GRANT, GIVE AND TAKE: WHY HELPING OTHERS DRIVES OUR SUCCESS? (2014).

36. See A.B.A. Standing Comm. on Pro Bono and Pub. Serv., *Supporting Justice*

guess is that “right thing to do” will once again be the top reason why lawyers do legal pro bono work. On the other hand, a taker will only do something if there is something to gain. According to Adam Grant, studies show that givers live a happier, healthier life, experience less depression and stress, enjoy more satisfaction and self-esteem, and actually earn more money.³⁷ Givers get higher performance ratings, make better decisions, and contribute more to their organization. Givers at any age, young or old, become shining examples for others.

I would assume that most of you here today are probably givers in that you, through your presence, obviously have an interest in access to justice issues. We need many more givers in Louisiana and across the country so that we can deal with the access to justice crisis. In light of what I have seen over the years, givers usually do fifty or more legal pro bono hours per year. On the other hand, takers usually give zero pro bono hours unless mandated to do pro bono work.

VII. NATIONAL PROGRESS AND STEPS TOWARD IMPROVEMENT

As I indicated earlier, in the 2016 ABA report entitled, *The Future of Legal Services in the United States*, there were a number of recommendations made as to how we can do a better job in helping the poor and the working poor from an access to justice standpoint. In my view, the report principally indicated, in large part, that we need to do more with technology; be more creative and innovative; think outside the box; try some new things; create more dialogue among judges, lawyers, legislators, law students, and bar associations on access to justice; and do more legal pro bono work.

III: A Report on the Pro Bono Work of America's Lawyers, A.B.A. 12 (2013), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lis_pb_Supporting_Justice_III_final.authcheckdam.pdf. The full list of categories included: “The client was low income/of limited means”; “The specific nature of the client’s legal problem”; “The referral source qualified the client”; “The organization was a non-profit”; “I had a personal relationship with the referral source – wanted to do a favor”; “I had a personal relationship with the client”; “The client was not low income/limited means, but unable to pay legal fees”; “The person was a single parent”; “The person was a non or limited English speaker”; “The person was a student”; “The person was incarcerated”; and “Other.”

37. ADAM GRANT, *supra* note 35.

Some have suggested mandatory pro bono work as a way to deal with our access to justice crisis. For example, United States Supreme Court Justice Sotomayor said: “I believe in forced labor when it comes to improving access to justice for the poor If I had my way, I would make pro bono service a requirement.”³⁸ She has further stated, “We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice.”³⁹

As of January 1, 2013, the New York Court of Appeals, New York’s highest court, requires each person seeking to be admitted to the New York State Bar to perform fifty hours of approved pro bono work, which can be done through school-approved programs.⁴⁰ The chief judge of the New York Court of Appeals said in part: “The new pro bono service requirement for admission to the New York bar serves to address the state’s urgent access to justice gap, at the same time helping prospective attorneys build valuable skills and imbuing in them the ideal of working toward the greater good.”⁴¹

VIII. NEW DEVELOPMENTS AND PROGRAMS FOR THE POOR AND WORKING POOR IN LOUISIANA

In addition to the previously mentioned ABA leader, New Orleans’s Judy Perry Martinez, I commend our Louisiana Supreme Court Chief Justice Bernette J. Johnson, our 2015–2016 Louisiana State Bar Association President Mark Cunningham, former Louisiana State Bar Association President Marta Ann Schnabel, and Louisiana State Bar Association Access to Justice Director Monte Mollere and his staff for their excellent leadership in regard to the many new access to justice initiatives, which should pay dividends for many years to come. Furthermore, I recommend that you review the previously mentioned December 2016/January 2017 Louisiana Bar Journal, where several articles

38. Tony Mauro, *Sotomayor Urges Mandatory Pro Bono for All Lawyers*, LAW.COM (May 17, 2016), <http://www.law.com/sites/articles/2016/05/17/sotomayor-urges-mandatory-pro-bono-for-all-lawyers/?slreturn=20170503190340>.

39. *Sonia Sotomayor Reflects on Her Success: First Puerto Rican Woman to be a Federal Judge*, 13 HISP. OUTLOOK HIGHER EDUC., Nov. 4, 2002.

40. See Advisory Comm. on N.Y. State Pro Bono Bar Admission Requirements, *Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments*, 1 (2012), <https://www.nycourts.gov/attorneys/probono/ProBonoBarAdmissionReport.pdf>.

41. N.Y. State Bar Admission: Pro Bono Requirement Facts, 4 (rev. Sept. 24, 2015), <https://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf>.

explain many of these new access to justice programs.

We have many fantastic, caring people working in our Louisiana access to justice arena. They are indeed inspirational. We have many excellent civil and criminal legal service providers. We have many devoted and concerned judges, such as Chief Justice Johnson, Judge Jay Zainey, Judge Lisa Woodruff-White, and Judge Bernadette D'Souza, just to name a few of the many who provide wonderful leadership to help resolve our access to justice crisis.

Importantly, you should be aware that for every dollar invested in civil legal aid services in Louisiana in 2016, state programs delivered \$8.73 in immediate and long-term economic benefits.⁴² That is a fantastic return on our investment.

Moreover, Louisiana lawyers can earn one hour of CLE credit for every five pro bono hours worked, up to a maximum of three credits per calendar year.⁴³ This new rule, effective May 1, 2015, was adopted by the Louisiana Supreme Court to encourage more legal pro bono work.

IX. LOYOLA UNIVERSITY NEW ORLEANS COLLEGE OF LAW: A LEADER IN SOLVING ACCESS TO JUSTICE ISSUES

“Doing good and pursuing good” is clearly Loyola’s natural law. There has been a tremendous amount of access to justice work going on at Loyola for many years. For example, Loyola has had a first-class clinic program for over forty years. The Gillis Long Poverty Law Center has been successful in fulfilling its mission to the poor since 1985. Loyola’s Incubator Program started in 2015 and was one of the first of seven such programs to receive an initial grant from the ABA.

Loyola has had many access to justice role models on campus over the years, especially the professors who work in Loyola’s various clinical programs. In particular, Professor Bill Quigley has been a nationally and locally recognized access to justice role model and leader for years. I have personally worked with Professor Luz Molina and Diana Mercer in regard to our Adams and Reese Access to Justice Developing Leadership Internship

42. *Investing in Civil Legal Aid Has a Ripple Effect on the Community*, LA. BAR FOUND., <http://www.raisingthebar.org/about-us/newsroom/80-lbf-news/343-investing-in-civil-legal-aid-has-a-ripple-effect-on-the-community> (last visited May 19, 2017).

43. La. Sup. Ct. R. XXX, r 3.21.

Program. Dean Larry Moore has always been very supportive of new access to justice initiatives on campus. Incoming Dean Madeleine Landrieu is a past Chair of The Pro Bono Project and was instrumental in securing hundreds of thousands of dollars from a federal agency to be used to help address the legal needs of those suffering in various ways following Hurricane Katrina.

I have been a member of the Loyola College of Law family since beginning law school here in the fall of 1974. Each of you, students and faculty members here today, are part of that same Loyola Law family. In one of our beautiful Catholic hymns, we sing: “They will know we are Christians by our love.” I say they will know we are Loyola lawyers, Loyola judges, Loyola law faculty, and Loyola law students by our love for others in a very special way through our access to justice actions—not just our talk. Providing meaningful access to justice for all must be a part of the DNA of each of us who proudly are part of the Loyola Law family. If not, then we are not serving others.

I have been blessed to have had many meaningful access to justice opportunities and experiences during my over forty-year legal career. During the summer of 1975 (between my first and second year of law school), I was a law clerk at the Rhode Island legal aid office where I saw firsthand the significant needs of pro bono clients and the tremendous compassion of the public interest lawyers serving those clients.

As a practicing lawyer, I have had the benefit of working with so many devoted, compassionate people in connection with my access to justice and pro bono work with The Pro Bono Project, Southeast Louisiana Legal Services, the Louisiana Access to Justice Commission and the Access to Justice & Legal Services Committee of the American College of Trial Lawyers. For close to twenty years, I have been the lead partner for Adams and Reese’s legal pro bono work. All of these opportunities and experiences have been great and have been very rewarding. I have made some wonderful friends and been inspired by some unbelievable caring people such as U.S. District Court Judge Jay Zainey, among many others.

Over the years, I have received tremendous joy and professional satisfaction from directly handling pro bono cases for needy clients. Although just about all of those matters seemed very small to me at the outset, I quickly realized they were huge for my pro bono clients. I needed to handle each pro bono case as I did any case for a Fortune 500 company. My pro bono clients

depended on me to do that.

X. RECOMMENDATIONS FOR SOLVING THE ACCESS TO JUSTICE CRISIS: A CALL TO ACTION

For the final part of this Lecture, let me provide you with some final recommendations:

On the funding issue, our national and state legislators need to know that those of us who support their campaigns are strongly in favor of legal aid to the poor. Maybe then they will think twice before voting to cut or reduce funding. As a legal community we need to be the voice for the poor and working poor in our society for meaningful access to justice.

Fortune 500 company clients need to put the same pressure on their law firms to perform pro bono work, just as they did to encourage diversity a number of years ago. They should strongly make it known that they want to work with those firms that share their same commitment to access to justice. If such a statement were made and followed through, we would see a significant increase in the amount of legal pro bono work done by law firms across our country. This would make a huge dent in our present access to justice crisis.

Private law firms need to consider forming pro bono partnerships with clients. They need to incorporate pro bono cases and matters into their training programs for young lawyers, which would allow those lawyers to get into court quickly, interview clients, take depositions, settle cases, and generally gain valuable first chair experience. Firms should seek out appropriate pro bono opportunities for their lawyers according to their lawyers' time, interest, and skills. Firms, internally and externally, encourage all lawyers to do pro bono work. Firms should give chargeable hour and billable hour credit for approved pro bono work up to at least fifty hours per year.

Legal service providers must analyze the principal reasons why lawyers do not want to do pro bono work—the time commitment, uninteresting work, and no real expertise in the area—and provide meaningful options.

Courts need to invite managing partners to in-court discussions on access to justice. For example, U.S. District Court Judge Jay Zainey is hosting an access to justice discussion in his courtroom with ABA President Linda Klein as the guest speaker.

The Louisiana Supreme Court, the Louisiana Access to Justice Commission, and the four Louisiana law schools should start a discussion as to whether Louisiana should institute the same fifty-hour pro bono bar admission requirement that New York has in place.

In addition, the Louisiana Access to Justice Commission should take the lead in discussing how we can motivate and encourage all lawyers in Louisiana to do more legal pro bono work. Our 18,000 practicing lawyers who average only five to ten hours of legal pro bono work per year is unacceptable. Although Louisiana is certainly not ready to accept or adopt any mandatory pro bono hour requirement, such as that suggested by Justice Sotomayor, we need to have more meaningful discussions within our legal community as to what can and should be done to address our ongoing access to justice crisis, with a particular emphasis on increasing what we collectively do from a legal pro bono standpoint.

Law schools need to have more access to justice discussions on campus and have more internships and externships that allow students to work on pro bono matters directly with practicing lawyers.

State-wide and local bar associations, and the overall access to justice community across the country and in Louisiana, need to actively encourage young lawyers and law students to be more involved in access to justice work and seek meaningful service on appropriate access to justice committees and boards.

We need to develop more usable plain English and Spanish legal instructions and documents for self-represented litigants. We need to expand the use of self-help desks to all courts, especially those where they are most needed in Louisiana. We need to make better use of technology and consider launching a pilot program to begin an online resolution for small claims. We need to think outside of the box and test new ideas.

Overall, as a Louisiana legal community, we should work together to see if each of our 18,000 practicing lawyers can do at least twenty-five hours of legal pro bono work a year, which is less than one hour per week and only 50% of the previously mentioned aspirational goal of fifty pro bono hours per year. If we did that, we would have 450,000 hours of pro bono work each year and help a tremendous number of needy people. Plus, we would set a wonderful example for others to follow in other states.

Law students and young lawyers need to get involved in access to justice work themselves and encourage, motivate, and inspire their peers to do the same.

In addition, the following are some key questions for you, as law students and future young lawyers, to ask yourselves given our access to justice crisis:

Is it important to me now as a law student to assist those who cannot afford a lawyer? If so, what can I do as a law student to be involved in access to justice?

Will access to justice be important to me once I pass the bar and start my legal career?

What can I do as a law student or young lawyer to provide access to justice to those in need?

What would be the most meaningful work for me to do from an access to justice or pro bono standpoint?

What am I most interested in?

What special talents and abilities do I have that can be put to use from an access to justice standpoint?

Is working for a firm or organization that values and encourages meaningful pro bono work significant to me?

Should I consider a career as a public interest lawyer?

As a young lawyer, can I spend fifty hours a year or about one hour each week on access to justice and legal pro bono matters? How much time do I spend each week just surfing the web?

Keep in mind, as Professor Viator told me while discussing this Lecture: “Doing good for others and doing better for yourself as a person and as a professional are not incompatible.” Find something truly rewarding and of interest to you—help the homeless, immigrants, children, victims of domestic violence, veterans, and indigent criminal defendants. Access to justice work can provide meaningful opportunities for you to meet and interact with state and federal court judges and with experienced practicing lawyers. You can volunteer to serve on access to justice and pro bono boards such as The Pro Bono Project and Southeast Louisiana Legal Services where you can develop your leadership skills.

Many big companies have strong pro bono programs and are

looking to hire in-house lawyers and outside law firms that share the same strong commitment to access to justice. You do not want to get to the end of your legal career and regret you did not do more from an access to justice or pro bono standpoint. I can assure you that your legal career will go by very fast. You do not want to get into the habit of saying: “I will do some pro bono work next year.” If you do, by the time you realize it, all those “next years” have become forty years, and must ask yourself, what have you really done with your legal skills to help those in need?

In the Book of Proverbs, it is written: “Open your mouth for the mute, for the rights of all who are destitute. Open your mouth, judge righteously; defend the rights of the poor and needy.”⁴⁴ I recently attended a Jewish Friday night Shabbat service with friends. I was particularly moved by one of the closing prayers wherein we all prayed: “Let us dress ourselves in the garments of God—compassion for the needy, embrace of the stranger.”

If you are involved in access to justice for others, you are using your God-given talents and abilities as a lawyer to the fullest extent possible. David Kutik, a past president of the Cleveland Bar Association once wrote:

Doing pro bono work connects us to people. We make the law and the justice system work for people who have nothing to give us but their gratitude. We empower them. We give them hope; we help them when they have nowhere else to turn. It makes us feel like a lawyer. It makes us feel that our training, our experience, and our judgment can do some good. It makes us feel that we are better people. And we are.⁴⁵

XI. CONCLUSION

Let me conclude by saying that we all have a choice to make as members of our noble legal profession: We can be indifferent to the access to justice needs of our poor and working poor or we can do something to truly make a difference in someone else’s life—*indifference or making a difference*—it is your choice. Thank you very much.

44. *Proverbs*, 31:8–9.

45. David A. Kutik, *Pro Bono: Why Bother?*, GP SOLO MAGAZINE, Oct.–Nov., 2005.