

WELCOME AND OPENING REMARKS

Dean William C. Hubbard*

Through the Looking Glass: Professional Responsibility, the Public Interest, and the Future of Legal Ethics and Lawyer Regulation in the United States.

The title for this Symposium encompasses myriad forces and factors that simultaneously coalesce and collide at this juncture in our profession and justice system. I am so grateful that the Symposium Editors, working closely with Professor Myles Lynk, committed to this topic and the issues it raises.

Over a year and a half ago, when Professor Lynk and I first began discussing the possibility of his spending a semester here as a distinguished visiting professor, he raised the idea of this topic for a spring symposium. Discussions followed with Editor-in-Chief Grace Driggers and Symposium Editors Lauren Hoyns and Erin Johnson.

Through their leadership and collective efforts, we are on the cusp of an important day of discussion and debate at the intersection of access to justice and protection of the public.

I will say out front, from my time leading up to and as President of the ABA, I urged the ABA, state and local bars, and the judiciary to look more creatively at our legal system to make it more accessible to more people. When I was President-Elect, the ABA Board of Governors granted the authority to appoint a blue-ribbon Commission on the Future of Legal Services. I appointed soon-to-be ABA President Judy Perry Martinez and Suffolk Law Dean and Ethics and Innovation Scholar Andy Perlman as co-chairs.

That Commission included some of the most impactful thought leaders on the very topic we have before us today. It included our own Elizabeth Chambliss, then-Northwestern Law Dean Dan Rodriguez, and Renee Knake, now of Houston Law School.

It was superbly staffed by Ellyn Rosen who will be with us on the 10:30 panel. In its report, the Commission made a number of important

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recommendations leading to the passage of several resolutions in the ABA House of Delegates that encouraged experimentation and innovation and to the creation of the ABA's Center for Innovation.¹

But, to be candid, progress has been slow and uneven. At a recent ABA House of Delegates meeting, adherents to the status quo were successful in cutting back on some of the progressive policy resolutions that were previously adopted.

At 11:30 today, you will hear from Lucian Pera. Lucian was a floor leader and persuasive speaker on the ABA House resolutions promoting innovation to improve access. He may be willing to show you some of the scars from those battles.

I am proud that this law school has played an important role in addressing fundamental issues of access to justice and the future of legal services. I commend to you the Winter 2016, Volume 62, Number 2 of the *South Carolina Law Review* entitled *What We Know and Need to Know About the Future of Legal Services: White Papers for the ABA Commission on the Future of Legal Services*.² There were sixteen white papers in that volume.

These papers are still relevant today. I will list only a few. *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers* authored by the late great Deborah Rhode of Stanford, by far the most-cited scholar in legal ethics.³ I am indebted to Professor Rhode for her leadership in helping organize the ABA's incredible Conference on Innovation in Legal Services at Stanford in May 2015.

Another paper in that volume of the *South Carolina Law Review* is *What We Know and Need to Know About the Legal Needs of the Public* by Rebecca Sandefur,⁴ a MacArthur Fellow at ASU who was a member of the ABA's Commission on the Future of Legal Services. Yet another is *What We Know and Need to Know About Outreach and Intake by Legal Services Providers*

1. See generally COMMISSION ON THE FUTURE OF LEGAL SERVICES, AM. BAR ASS'N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES (2016).

2. *What We Know and Need to Know About the Future of Legal Services: White Papers for the ABA Commission on the Future of Legal Services*, 67 S.C. L. REV. 193 (2016)

3. Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429 (2016).

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

by Jim Greiner, a Columbia native who is now Professor of Law at Harvard and Director of Harvard's Access to Justice Lab.⁵

As noted, you can see that the relevant topics then are still highly relevant topics today. To some extent, that is a disappointment. We are not making real progress on access to justice despite new technologies and the existence of innovative processes that could be employed. Too many lawyers and regulatory bodies remain opposed to rules, reforms, and new operational models.

In the World Justice Project's 2022 Rule of Law Index, the United States ranked 115 out of 140 countries on accessibility and affordability of civil legal services.⁶ That is reinforced by the Legal Services Corporation's (LSC) April 2022 Justice Gap study which revealed that 92% of the civil legal problems of low-income Americans did not receive any or enough legal help.⁷

We must not be discouraged. There are green shoots of progress. In the just-released *South Carolina Legal Needs Assessment* led by Professor Chambliss, 57% of South Carolina lawyers expressed support for well-trained non-lawyers to provide limited legal services to those who cannot afford a lawyer.⁸ These specially trained individuals can help litigants maneuver through the complexities of our justice system and not have to go it alone. The need is great. In 75% of the civil cases in the state courts of the United States, at least one party is not represented by a lawyer. In the words of former LSC President Jim Sandman: "Some competent legal assistance is better than none."

We need bold action to bridge the justice gap. As a self-regulated legal profession, the time is running out to get our affairs in order.

On February 14, 2023, the Antitrust Division of the United States Department of Justice wrote a letter to the North Carolina General Assembly

5. D. James Greiner, *What We Know and Need to Know About Outreach and Intake by Legal Services Providers*, 67 S.C. L. REV. 287 (2016).

6. See generally WORLD JUSTICE PROJECT, RULE OF LAW INDEX (2022).

7. See generally LEGAL SERVICES CORPORATION, THE JUSTICE GAP REPORT (2022), <https://justicegap.lsc.gov/resource/executive-summary/> [<https://perma.cc/PR8A-LLJA>].

8. See generally BRUCE RICH ET AL., SOUTH CAROLINA LEGAL NEEDS ASSESSMENT 2022 (2023), <https://static1.squarespace.com/static/5d38a7143b6514000155e5a9/t/64184e6db3775a6576cbffe/f/1679314547803/CHCS+-+SC+LNA+-+Final+Report+-+February+21%2C+2023+-+with+Appendices+-+03-17-23.pdf> [<https://perma.cc/9M8C-PMVL>].

regarding certain policy recommendations proposed by the North Carolina Justice for All Project.⁹ The letter states, in pertinent part:

Because of the importance of legal services to consumers, our economy, and our democracy, the regulation of the practice of law has been an area of interest for the Antitrust Division for decades. The Division has long argued that consumers generally benefit from competition between lawyers and non-lawyers in the provision of a wide range of services.¹⁰

The letter then goes on to say:

[T]he United States Supreme Court has made clear that federal antitrust law generally applies to the legal profession. Unduly broad restrictions on the practice of law impose significant competitive costs on consumers, workers, and innovation. . . . Expanding the pool of providers who may compete in the market for legal services in North Carolina will reduce costs for North Carolina consumers seeking legal assistance. In addition to expanding consumer choice, broadening the pool of legal service providers would protect consumers from the often-harmful consequences of being forced to handle legal problems on their own. . . . [I]n the absence of evidence of legitimate and substantiated harms to consumers, restraints on competition in the market for legal services should be narrowly tailored to avoid unnecessarily limiting competition.¹¹

If we wish to continue as a self-regulated profession, we must act. We must be bold. We must be creative. It is our duty.

The preamble to the South Carolina Rules of Professional Conduct (adopted from the Model Rules) provides: “As a public citizen, a lawyer should seek improvement of the law, access to the legal system . . . [A] lawyer should . . . employ . . . knowledge in reform of the law . . . [A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”

9. Letter from Maggie Goodlander, Deputy Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Just., to N.C. Gen. Assembly (Feb. 14, 2023) (on file with the *South Carolina Law Review*).

10. *Id.* (footnotes omitted).

11. *Id.* (footnotes omitted).

It is our ethical and professional duty to provide access to justice.

Moreover, the rule of law itself depends on access to justice. Access to justice is an essential element of rule of law. And rule of law is the foundation for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights.

The Preamble to our Constitution makes our calling crystal clear: “We the People of the United States, in order to form a more perfect union, establish justice” Justice is the first priority of our nation. Justice is our calling. And there is no justice unless there is access to justice.

We have work to do. It is good work. Let’s get started.