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# CIVIL JUSTICE REFORM AND PROSPECTS FOR CHANGE

*Karen O'Connor\**

## INTRODUCTION

This Symposium, *Reinventing Civil Litigation: Evaluating Proposals for Change*, is an ambitious and serious effort to bring diverse academic and practical perspectives together to address the problems in the civil litigation sphere. In *New Paradigm, Normal Science, or Crumbling Construct? Trends in Adjudicating Procedure and Litigation Reform*, Professor Jeffrey W. Stempel thoughtfully calls for a model of litigation reform that “would retain the judge-centered deliberative mode of the Enabling Act while incorporating some aspects of the legislate process at its most open.”<sup>1</sup> He calls for more dialogue and a “reflective, sustained examination of the subject matter”<sup>2</sup> and input from as many quarters of the legal profession as possible. He also notes that “few aspects of litigation structure are likely to be so defective as to require immediate systematic change.”<sup>3</sup> Professor Richard L. Marcus gives away his perspective in the title of his article, *Of Babies and Bathwater: The Prospects for Procedural Progress*, and seems to agree with at least some of what Professor Stempel has to say.<sup>4</sup> He, too, sees no need to embrace the activist state as a new paradigm.<sup>5</sup>

In a different vein, Professor Lauren Robel analyzes the civil justice reform outlined in The Civil Justice Reform Act of 1990 and examines the efforts of several federal trial districts

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<sup>1</sup> 59 BROOK L. REV. 659, 742 (1993).

<sup>2</sup> *Id.* at 739. These are eminently reasonable and even desirable prerequisites of “good” public policy. As discussed in Part II, *infra*, it is my contention that while, in Lindbloom’s terminology, the reform movement in the short term may continue to “muddle through,” only major change will end the reform debate.

<sup>3</sup> *Id.* at 744.

<sup>4</sup> 59 BROOK. L. REV. 761 (1993).

<sup>5</sup> *Id.* at 814-15.

to implement those reforms.<sup>6</sup> And, also dealing with the practical aspects of litigation reform, in *From Civil Litigation to Private Justice: Legal Practice at War with the Profession and its Values*, Bryant Garth makes several important points about the role of the organized bar in civil justice reform.<sup>7</sup>

If I may adopt the role of the devil's advocate and don my hat as a political scientist, I would like to suggest that most, if not all, of the kinds of incremental changes proposed in articles throughout this issue are unlikely to do much to change the crisis rhetoric that many employ when discussing the legal system. At a time when lawyers and the legal profession enjoy little public esteem or respect from the general public, rule changes will simply not be enough to change any "crisis" in the courts—real or imagined. Instead, dramatic reforms will be necessary. And, as Bryant Garth adroitly notes, the organized bar or, possibly, even many of the distinguished academicians contributing to this Symposium may not be in the position to be major players in any moves for drastic change.

It is my contention that whether or not the system in fact is broken, the public thinks it is. Just as importantly, many blame the legal profession for those problems. Tinkering with the system will *never* be enough to change these perceptions. And, given the low esteem enjoyed by the legal profession, change may be forced upon it and the legal system by those outside the system. Only a major overhaul of the civil and criminal justice systems<sup>8</sup> of the kind currently being suggested for health care will be enough to change the perception that something is wrong. Unlike the health care crisis, however, not everyone is in agreement that real problems exist. Not only did several of the federal judges and practitioners in attendance at this conference not perceive there to be a major crisis in the courts, several scholarly studies support that view. In contrast,

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<sup>6</sup> Lauren K. Robel, *Grass Roots Procedure: The Turn to Localism in Civil Justice Reform*, 59 BROOK. L. REV. 879 (1993).

<sup>7</sup> Bryant Garth, 59 BROOK. L. REV. 931 (1993).

<sup>8</sup> While this collection of readings and the Symposium itself was confined to reforms of the civil litigation system, as Judge Winter's address points out, civil and criminal reform are inextricably related, for better or worse. Unless we re-think our court system and create separate criminal and civil courts as opposed to dockets, one cannot really discuss how to speed up the civil litigation side when it is so dependent on the volume of cases heard on the criminal side.

most doctors, hospitals, politicians and the public agree by large margins that a crisis exists in our health care system. At the same time, it is clear that no one can agree on how to handle the health care crisis. And, perhaps just as importantly, the medical profession itself, which enjoys far greater respect than the legal profession, was not initially a major player in the development of reform. Thus, the question for all of us in the legal profession is an unsettling one: once true reform (revolution?) begins to be addressed seriously, what, if any, role will the legal profession be able to play?

In Part I, I examine whether a crisis exists and the changes that have given rise to the poor public perception of the legal profession. In Part II, I outline the efforts of the bar to address these issues and argue that a complete overhaul of the legal system is necessary so that all Americans have access.

## I. THE RHETORIC OF CRISIS

Throughout the 1992 presidential election contest, President George Bush and Vice-President Dan Quayle attempted to paint American trial lawyers as responsible for many of the ills that faced America. Speaking at a meeting of the American Bar Association, Dan Quayle, himself a lawyer, attempted to tap public anti-lawyer sentiments. He criticized the legal profession for filing too many lawsuits and mockingly portrayed trial lawyers as embodiment of the Democratic Party just as some had equated fat cat corporate executives with the Republican Party.<sup>9</sup>

Obviously something more was going on during the 1992 presidential campaign and the debate that it evoked about problems in the legal system. For example, while most agreed that the public educational system was a mess *and* that the mess was taking a disastrous social and economic toll, no one (as best as I can recall) called teachers names or questioned their motives. So, too, most of those polled noted their belief in the need for reform of the health care system.<sup>10</sup> But, doctors

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<sup>9</sup> Remarks to the House of Delegates at the Annual Meeting of the American Bar Association (Aug. 13, 1991).

<sup>10</sup> Gerald M. Pomper, *The Presidential Election, in THE ELECTION OF 1992: REPORTS AND INTERPRETATIONS* 146 (1993).

and nurses were not personally attacked. Instead, it was lawyers "in their tasseled loafers" who were maligned.

This Part seeks to explain what it is about the legal profession and the legal system that allowed Dan Quayle and Republican strategists to believe that attacks on it would be a viable campaign strategy. There are three factors that may explain this: the arguable crisis in the courts, the decline in professionalism within the legal community that resulted from an oversupply of lawyers and lower salaries and the effects of lawyer advertising.

### A. *Is There a Crisis in the Courts?*

In the past few decades, numerous studies have examined the legal system in an effort to show, through empirical analyses, whether or not a "crisis" exists. The core of these findings has been reported elsewhere and will not be rehashed here. Suffice it to say, though, that several reputable scholars and independent reports appear to indicate that while the system has problems, no real "crisis" exists.<sup>11</sup> The exhaustive Civil Litigation Research Project ("CLRP") based at the University of Wisconsin, for example, concluded that our society is not overly litigious and that both sides actually gain in the process.<sup>12</sup> Similarly, a study by the National Center for State Courts ("NCSC") found that filings decreased from 1981-1984.<sup>13</sup> Marc Galanter, also at the University of Wisconsin, has been prompted to write of the presumed crisis:

I have argued that the hyperlexis reading of the dispute landscape

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<sup>11</sup> See generally DEBORAH R. HENSLER ET AL., *TRENDS IN TORT LITIGATION: THE STORY BEHIND THE STATISTICS* 11 (1987); JETHRO K. LIEBERMAN, *THE LITIGIOUS SOCIETY* (1981); Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 *UCLA L. REV.* 4 (1983); Thomas D. Rowe, *American Law Institute Study on Paths to a "Better Way": Litigation, Alternatives, and Accommodation Background Paper*, 1989 *DUKE L.J.* 824; David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 *UCLA L. REV.* 72 (1983).

<sup>12</sup> DAVID M. TRUBEK ET AL., *CIVIL LITIGATION RESEARCH PROJECT: FINAL REPORT* §§ 75-78 (1983).

<sup>13</sup> NATIONAL CENTER FOR STATE COURTS, *1984 STATE COURT CASELOAD STATISTICS: ANNUAL REPORT* 173 (1986). This has prompted one author to speculate that if there was a "litigation explosion," it peaked in 1981. See Rowe, *supra* note 11, at 840.

displays the weakness of contemporary legal scholarship and policy analysis. We have seen the announcement of general conclusions relevant to policy on the basis of very casual scholarly activity. The information base was thin and spotty; theories were put forward without serious examination of whether they fit the facts; values and preconceptions were left unarticulated. Portentous pronouncements were made by established dignitaries and published in learned journals. Could one imagine public health specialists or poultry breeders conjuring up epidemics and cures with such cavalier disregard of the incompleteness of the data and the untested nature of theory?<sup>14</sup>

But still, some continue to be concerned about a crisis and have voiced concerns about flaws in the CLRP and NCSC studies.<sup>15</sup> The crisis mentality continues in spite of several empirical studies that call its basic assumptions into question. And, no matter what the data actually show, there is no doubt that some people believe that a crisis or, at minimum, a need for reform exists. There would have been no conference at the Brooklyn Law School or Symposium in this issue, for that matter, if civil law reform did not continue to be considered a serious question in need of serious thought as so ably displayed in the articles included in this issue.

Indeed, academicians and lawyers do believe that this is an important question, and one could argue that their rhetoric has contributed to the perception of crisis. When lawyers or the legal profession use the word "crisis," the public is eventually going to agree. A 1991 Boston Bar Association Report, for example, was entitled, *The Massachusetts Courts in Crisis: A Model for Reform*.<sup>16</sup>

Lawyers certainly do believe that a crisis exists. While I am aware of no opinion polls that employ the crisis mentality or even use crisis questions, surveys of attorneys do find that lawyers believe there are problems with the legal system. In response to the question, "Is there too much litigation?," for example, a poll of 578 attorneys reported that 62% answered

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<sup>14</sup> Galanter, *supra* note 11, at 71.

<sup>15</sup> See RICHARD H. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* 59 (1985); see also Thomas B. Marvell, *There Is a Litigation Explosion*, NAT'L L.J., May 19, 1986, at 13 (discussing the NCSC 1986 study which criticizes the unrepresentative nature of the 1981-1984 period).

<sup>16</sup> John P. Driscoll, Jr., *President's Message*, MASS. LAW. WKLY., July 22, 1991, at 33.

"yes," and 33% reported "no," while only 5% voiced no opinion.<sup>17</sup>

Not only do members of the legal profession believe that there are problems with the legal system, so does the public. One Massachusetts study presents a sobering view of the public's assessment of the legal system.<sup>18</sup> Eighty-one percent of the public believed litigation was too costly, 88% believed the system was too slow and 79% believed that the system was too hard to understand.<sup>19</sup> The numbers were even higher for minorities.<sup>20</sup> In fact, several events occurred in the late 1970s through the 1980s that were to have a tremendous and, often, interrelated impact on the legal profession, the practice of law in the United States, the civil litigation system and ultimately the public's perception of all three. Chief among them were the growth in the legal profession and lawyer advertising.

### B. *The Growth of the Legal Profession*

During the 1980s, lawyers faced important changes, because of which the legal profession now looks and acts less like a noble profession and more like a business. While the decade of the 1980s saw little growth in the number of accredited United States law schools,<sup>21</sup> from 1963 to 1980 the number of accredited law schools increased from 135 to 171—nearly a 27% jump. At the same time, the number of students enrolled in law schools rose by 103%.<sup>22</sup> The decade of the 1980s saw a much lower rate of increase in the number of law students, but still, over 35,000 new practitioners were added to the bar each year except 1985, during which there was a small decline.

Yet, in spite of the popularity of television programs such as *L.A. Law*, college graduates no longer viewed law school degrees as their golden ticket to success. The addition of thirty

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<sup>17</sup> Paul Reidinger, *The Litigation Boom*, 73 A.B.A. J. 37 (1987).

<sup>18</sup> David A. Hoffman, *Lawyer-Bashing, Litigation Costs and ADR*, MASS. LAW. WKLY., Dec. 14, 1992, at 11.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> In 1980-81, there were 171 law schools; in 1989-90, there were 175. AMERICAN BAR ASSOC., A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES: LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS 66 (1991).

<sup>22</sup> *Id.* J.D.s or LL.B.s were awarded to 9638 students in 1964 and to 35,059 students in 1980. *Id.*

to forty-plus thousand new lawyers to the bar annually exceeded the number of new lawyers actually needed each year in spite of an economy that experienced a boom in several sectors throughout most of the 1980s. Although the economy was booming in many areas, problems for lawyers began in the mid-to-late 1980s when real estate and banking law practices were adversely affected by the initial fallout from the Savings and Loan scandal. Throughout the country, lawyers began to lose their jobs as banks were closed or consolidated, or firms downsized.

The contraction of the market was heightened by the large number of recent law school graduates seeking work at lower starting salaries than in the past,<sup>23</sup> which had several consequences. As later discussed, as more and more lawyers became solo practitioners or were forced into plaintiffs work, many began to advertise to seek business. Others began to diversify to enhance their usefulness to their firms. Some, as also later discussed, began to pursue alternative dispute resolution practices as a means of shoring up their client base. And, others simply looked for more ways to bring in business. Partners were no longer judged by their billable hours. In many firms, even senior partners were expected to beat the bushes for more clients as revenue production became a major determinant of their worth to the firm.<sup>24</sup>

As Bryant Garth points out in his contribution to this Symposium, the pressure on attorneys to make money may have important consequences on the organized bar in the long run, which in turn will have important consequences on legal reform.<sup>25</sup> Historically, bar service, although taking away billable hours, has been considered a "public good" by most law

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<sup>23</sup> Starting salaries in major metropolitan areas began to fall for attorneys around 1989. Other firms simply cut back on the number of first-year associates hired. Mary Q. Voboril, *What Do You Call a Thousand Lawyers "in transition"? A: Out of Work; Attorneys Face the Worst of Times in This Recession Battered Economy*, *NEWSDAY*, May 17, 1993, at 27.

<sup>24</sup> Salaries fell, too, and dramatically in some hard hit areas, even in prestigious big firms. In 1993, for example, only two of the nation's largest law firms posted profits of more than \$500,000 per partner; seven did in 1989. Moreover, overall partner's salaries were down to \$319,000 from \$360,000 in 1988. *Id.* In 1993 the going rate in Manhattan for legal temps was \$50 an hour, down from a high of \$260. *Id.*

<sup>25</sup> Garth, *supra* note 7, at 954-56.



firms. Although, as Garth notes, it is likely that few would reject any financial rewards that came from the enhanced reputation and exposure that well-respected members of the organized bar receive, many participated in the bar (and its reform efforts) for the good of the legal profession.<sup>26</sup> Thus, the proliferation of big national and multi-national law firms made the legal profession look less like a profession and more like a business.<sup>27</sup> And, in most businesses the bottom line is revenue, not good works. Thus, the lawyer of the 1990s may not be as likely to put service to the profession (and consequently to reform) at the top of his or her list when there is a mortgage to pay. This, in turn, results in a negative public perception of the legal profession.

### C. *Lawyer Advertising*

Another significant factor in the changing public perception of the legal profession is the rise in lawyer advertising. In 1977, the Supreme Court ruled that the legal profession no longer could bar attorneys from advertising their services.<sup>28</sup> Almost overnight, lawyers' faces were plastered on buses and on television. At least initially, most of those advertising were personal injury and plaintiffs' lawyers, the kinds of practitioners that many "ambulance chasing" laws originally were designed to regulate, and they were looked down upon by lawyers and firms that did not.

This advertising had several effects on the profession. While the upside of this advertising and its solicitation of clients provided greater access to the legal system for many, there was also a downside. The number of cases filed on already crowded dockets increased at the same time the criminal docket was increasing at an even greater rate and less space was left on the docket for judges to hear civil suits in a timely

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<sup>26</sup> *Id.*

<sup>27</sup> See Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1 (1988).

<sup>28</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); see *In re R.J.M.*, 455 U.S. 191 (1982); see also Deborah R. Hensler & Mark A. Peterson, *Understanding Mass Personal Injury Litigation: A Socio-Legal Analysis*, 59 BROOK. L. REV. 961 (1993) (discussing the role of lawyer advertising in the explosion of mass tort litigation).

manner. Moreover, as law was made more and more available to the masses and more and more people actually knew a lawyer personally, the "mystique" of the lawyer disappeared.<sup>29</sup> Just as a "Cult of the Robe"<sup>30</sup> has long existed, law and its practice by a relatively foreign set of rules were removed from, and therefore foreign to, most Americans. Lawyers, therefore, gained prestige from their particularized knowledge and expertise. Advertising and the expansion of legal services demystified the law and made it more vulnerable to attack.

The ending of this mystique and the first wave of legal advertising that most often resembled the quality and nature of used car advertisements tended to lessen public respect for lawyers. The ads were unprofessional and made the legal profession look unprofessional. Although most members of the legal profession, and especially the organized bar, are likely to take umbrage at any association with used car dealers, that association has clearly been made in the eyes of the public. Public opinion poll after public opinion poll continue to reveal that the public tends to regard lawyers as only one notch above used car dealers in their "trustworthiness."<sup>31</sup>

On a quite different scale, however, has been the development of the more sophisticated kind of lawyer advertising. As the competition for clients became keener, even big firms moved to hire public relations specialists to advance their name in the press and in the legal community. For these firms, it may still be that organized bar activity will add prestige and, therefore, be considered a plus. But the public at large is not particularly aware of this kind of professional self-promotion. Thus, this kind of "respectable" publicity is unlikely to have had much impact on the public's perceptions about lawyers or on their feelings toward them.

The kinds of mass tort litigation addressed in this Sympo-

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<sup>29</sup> See Galanter, *supra* note 11, at 50 n.230.

<sup>30</sup> The development of prepaid legal services also contributed to the democratization of the legal system. With apologies to John Brigham. *CULT OF THE COURT* (1987); see also JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 254-6 (1949) (discussing the "Cult of the Robe" as a deterrent to public understanding of judges and the legal profession).

<sup>31</sup> See, e.g., *Public Opinion of Clergy Reaches All-Time Low, Poll Finds; But Religious Leaders Still Rated More Highly Than Lawyers, Congressmen*, DALLAS MORN. NEWS, Nov. 28, 1992, at 49A.

sium by Drs. Hensler and Peterson, however, may have been affected by such promotion. While mass tort cases can give big business a "bad name," the plaintiffs' lawyers often may appear in an equally bad light. In essence, they may present a "lose, lose" situation for the legal profession and organized bar. Not only do companies and *their* lawyers come off badly, but the lawyers who advertise for clients in these mass tort situations might look more like self-promoters than conscientious professionals.

## II. LAWYERS AND THE ORGANIZED BAR

Clearly, the legal profession historically has had its share of critics. In *Henry VI*, William Shakespeare was among the first to note: "The first thing we do, let's kill all the lawyers." Since that time, lawyers have repeatedly been the butt of jokes that put the profession in an unfavorable light. So have other groups. But in the late 1980s, these jokes began to have a sharper edge.<sup>32</sup> At the same time public opinion about lawyers reached an all-time low. Once lawyers began to be held in nearly the same esteem as the lowest of the low—used car salespersons—something was broken and more and more calls began to be made to fix the legal system. Even before Dan Quayle spoke out against the legal profession and for the need for system-wide reform, the bar, itself, had been giving serious thought to that question.

In February 1992, the ABA's Working Group on Civil Justice System Proposals released its long-awaited report, *ABA Blueprint for Improving the Civil Justice System*.<sup>33</sup> Although the plan has its critics, it was a serious attempt on the part of the organized bar to respond to its critics. It was also a comprehensive effort that attempted to examine all facets of the justice system.

In addition to taking action on the reform front, the ABA has gone so far as to launch a public relations campaign with a million dollar budget. Michael Scanlon, Jr., the ABA's new

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<sup>32</sup> Roni Rabin, *THE ANSWER: Professional Courtesy; THE QUESTION: Why Didn't the Shark Maul the Lawyer?*, NEWSDAY, July 1, 1993, at 60.

<sup>33</sup> WORKING GROUP ON CIVIL JUSTICE SYSTEM PROPOSALS REPORT, AMERICAN BAR ASSOC., *ABA BLUEPRINT FOR IMPROVING THE CIVIL JUSTICE SYSTEM* (1992).

communications director, has a formidable task before him, but he intends to use a variety of techniques to win back public esteem to the ABA and the legal profession.<sup>34</sup> This could be a case of too little, too late, however. As should be clear from the debate that surrounds changing the health care system, reform may not be enough. A total overhaul may be on the horizon. Or, if it is not, it may be that in spite of many of the suggestions to the contrary in this Symposium, tinkering with the system is simply not worth the effort in most cases. The system will undoubtedly continue to muddle along with new problems continually on the horizon unless dramatic changes are made.

The legal profession, however, enjoys one unique benefit over the medical profession when the question of governmental reform is at issue: lawyers make up the majority of most legislative bodies and they understand the justice system better than most. That is to their credit and can be a benefit. Yet, their training in the legal method, if you will, instills in most a basic belief that the system is just and fair for most and only in need of remedial tinkering and, perhaps, a greater expansion of legal services to the "have-nots." It is this feeling of complacency that is perhaps potentially the most threatening to chances of major system reform. Politicians (who often enjoy honesty or approval ratings comparable to that of lawyers—maybe even because so many are lawyers), generally are not open to radical change.<sup>35</sup> Change is just not the nature of the political beast.

Thus, while the make-up of legislative bodies at first looks like a plus for the profession, it may actually be a minus. It is attendant, then, upon the organized bar to take advantage of its position to make the need for change clearer not only to legislators but to the public as well. As Bryant Garth notes in his Article, however, this may be difficult for the bar to do given the changing and increasingly competitive nature of law and the decreased importance that some firms place on service to the profession through organized bar activities. Indeed, I would argue that the task for the organized bar is even more

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<sup>34</sup> Saundru Torry, *A Million Dollar Campaign to Love the Lawyers*, WASH. POST, May 24, 1993, at F7.

<sup>35</sup> See *supra* note 22.

complicated. Meaningful reform is likely to come only in the context of a call for *major* change, replete with specifics. It may be difficult to get the ABA to endorse major change, but failure to endorse it (or better yet, to propose it), carries the threat of the ABA being shut out of the process altogether.

Instead of reevaluating the system from the ground up, lawyers and academicians have made a cottage industry of suggesting well-meaning reforms that may be likened to sticking one's thumb in a hole in a dike. For example, as a society and a profession we appear to be torn by rights rhetoric. At the same time that many advocate fuller access to the courts by all, myriad new forms of alternatives are offered instead. In the 1960s and even into the 1970s and 1980s, the public interest law movement looked like it might be the answer.<sup>36</sup> And, clearly it was the answer for some, as major advances were made on several civil rights fronts. But, while organized interest groups have been the avenue of significant legal change, they have limited resources.

Some of the authors in this issue seem to see ADR as the next positive wave of the future; but it may ultimately present as many problems as it addresses. The Judges of Fulton County, Georgia, for example, created a "Complex Civil Case Division" in 1991 that *requires* all civil actions seeking money damages of \$25,000 or less "to go through compulsory but non-binding arbitration."<sup>37</sup> This kind of compulsory, non-binding arbitration simply adds another layer onto the legal ladder and presents another potentially costly hoop for the "have nots" to jump through in their battle against the "haves." For example, in the context of a dissolution of marriage, in which women are often in inferior bargaining positions to men, the addition of this layer of "justice" simply means that some women are more likely to run out of the money necessary to vindicate their rights fully at an earlier stage of the game.

This inequity highlights perhaps the greatest problem in the civil litigation process: inequity of resources. As the debate for national health care has so purposely underscored, most

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<sup>36</sup> See JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978); KAREN O'CONNOR, *WOMEN'S ORGANIZATIONS' USE OF THE COURTS* (1980); Stephen L. Wasby, *Civil Rights Litigation by Organizations: Constraints and Choice*, 68 *JUDICATURE* 337 (1985).

<sup>37</sup> A.J.C. CIV. ARB. 1000.

Americans agree that everyone should have access to quality health care, *regardless of each American's ability to pay for it*. Why shouldn't the same rationale underlie a change in the basic delivery of legal services? As the profession—at least in some areas—becomes more and more specialized, fewer “good” general practitioners are available. Like the medical profession, specialization is where the money is and that is where the best lawyers often go.

Why not come up with some way to restructure the profession that could allow greater access to all? Why shouldn't every family have a “family lawyer” akin to the old family doctor who would know the family and be able to advise them on a regular basis and refer them to a specialist if needed? In such a system many disputes can be taken out of the courts into some form of ADR setting, but with the clear understanding that all would be equally represented and that a lack of money would not be tantamount to a denial (or severe rationing) of justice.

## CONCLUSION

Lawyers, especially specialists, have turned the civil litigation process into one that few can understand. One need only to read the pieces on complex litigation in this issue to begin to get an idea of the scope of the problem. What I suggest is that we need to look at the system that produces this kind of litigation and reassess our basic assumptions about the legal system. There is no reason why the delivery of legal services, which should provide each American citizen with basic constitutional guarantees, could not be rethought from the ground up in much the same way that health care reform is being discussed.

