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The Justice Gap Appears to Be Getting Wider: How Are We Going to Deal With It?

Mary and John are a Louisiana couple in their early 30s who pay a monthly mortgage, car payments, credit card bills, and school tuition for their two school-aged children. In addition to these bills, this hypothetical family of four, who are almost done paying off Mary's and John's college loans, recently incurred substantial unexpected expenses to help care for John's elderly mother who has been suffering from a chronic illness and sometimes requires help at home that John and Mary cannot provide. If these expenses were not enough, this middle-class American family knows that, while their incomes from work will only increase by a few percentage points over the next few years, they are certain to face increased educational costs when their children enter high school in a few years. Orthodontic bills are looming. Music lessons, sports team uniforms, eyeglasses, prescription drug bills, grocery bills and the like consume this little family's income, leaving very little for savings. They are not extravagant spenders. They are prudent and responsible with their money, yet they are very worried about how they will be able to afford to send their children to college, and retirement seems like an unattainable dream for which they are hardly able to save.

Are Mary and John poor? They are college graduates and homeowners.

Mary works in human resources for a health care company, and John works in the IT department at a local college. They earn a combined income of just over six figures, but, at this stage of life, they have only minimal savings. They could pay all their recurring expenses for about three months if they both suddenly found themselves out of a job.

As a general matter, Mary and John are not the people we think of when we think of the "Access to Justice" problem in America — or Louisiana. We think of single mothers working the night shift at a fast food restaurant, the uneducated, the elderly, tenants facing issues with their landlords, women who are victims of domestic abuse, veterans in need of help with benefits, or we think of the very poorest among us, but not Mary and John.

Our perception of the "Access to Justice" problem may be at the heart of one of the biggest challenges facing the legal profession, courts and the general public for years to come. *Are we reaching a point where most Americans cannot afford lawyers?* Surely this is a scary thought. But, let me phrase it another way — how many of us could afford ourselves?

What happens to a family like Mary's and John's when some complex legal problem arises? Can they pay a \$5,000 retainer? Can they afford \$300 an hour with no guarantee of success? Maybe.

Maybe not.

Regardless of their ability to afford traditional legal services — what lawyers do after a client makes an appointment to meet with a lawyer and pay a retainer, an hourly rate or some fixed fee for legal services — more and more consumers like Mary and John are bypassing traditional legal services and taking matters into their own hands because they are either unable or unwilling to pay for legal services the ways consumers have in the past. A growing number of people like Mary and John are turning to the Internet, to companies that sell forms, self-help legal books and the like to solve their legal problems — without lawyers. Many educated Gen-Xers and Millennials view legal problems as something that can be tackled "DIY" like a new bathroom or kitchen project. Recent studies suggest *pro se* bankruptcy filings are increasing dramatically, and roughly 10 percent of non-prisoner suits in federal court are now being filed *pro se*. Some legal commentators have suggested that *pro se* filings are beginning to have a serious, negative impact on the ability of courts to properly and effectively do their work. Louisiana courts are seeing record numbers of *pro se* litigants in family and domestic cases.

Granted, a family like John's and Mary's has the ability to adjust its lifestyle and make sacrifices the truly indi-

gent and unfortunate could never make and could, of course, hire a lawyer to tackle a serious, unexpected legal problem. John and Mary also have educational and other resources that make them better suited to help themselves than a poorly-educated person living in poverty, but the fact that people like John and Mary are bypassing the traditional providers of legal services — lawyers — is a troubling trend. We know that lawyers are the best deliverers of legal services. We have the best product, but do consumers understand that? And, why are they suddenly less willing — or able — to pay for quality legal work?

How do we solve *these* kinds of “Access to Justice” issues? It is an axiomatic truth that a complex problem usually does not have a simple solution.

Our profession must devote time and resources to ensuring that all citizens have fair access to justice. The Louisiana State Bar Association’s (LSBA) Access to Justice Committee, the Louisiana Bar Foundation and the Louisiana Access to Justice Commission, a collaborative project between the Louisiana Supreme Court and the LSBA, are all working mightily to ensure that all Louisiana’s citizens, regardless of their economic circumstances, have access to equal justice under law. These programs have, of course, focused primarily on helping our poorest and least-resourced citizens gain access to our courts.

The American Bar Association (ABA) has spent a tremendous amount of time studying many issues related to the delivery of legal services in the future and recently released its long-

awaited Report on the Future of Legal Services. Indeed, Judy Perry Martinez, a member of the Louisiana Bar, chaired the ABA Commission that did this important work. Lawyers and judges around the country are studying the report and working to determine which of the ABA Commission’s recommendations are workable or appropriate in their states.

Access to Justice is something we would all like to believe is guaranteed in our system, but it is not. It is something we must work hard to preserve and ensure. The LSBA is focused on this important goal and welcomes your help.



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