

The Invisible Justice Problem

Lincoln Caplan

Abstract: Understanding is sparse about the lives of people who are poor and struggling economically and who need help in solving a legal problem and don't get it. Politics over the past half-century has made them largely invisible. In that period, attacks of the right on the provision of access to justice have rested on the triumph of laissez-faire views: the fresh embrace of markets and the free-enterprise system. The upshot has been the winner-take-all economy of the past generation, in which improved access to justice is largely a nonissue. For access to become a priority of a national movement, it needs champions in national politics, not just in the legal profession. It needs powerful champions who advocate for greatly increased and improved access to justice as a primary American commitment.

LINCOLN CAPLAN is a longtime journalist and author who writes about law and public affairs. He is also the Truman Capote Visiting Lecturer in Law and a Senior Research Scholar at Yale Law School, and Senior Editor at the Knight First Amendment Institute of Columbia University. He is the author of six books, including *American Justice 2016: The Political Supreme Court* (2016), *Skadden: Power, Money, and the Rise of a Legal Empire* (1993), and *The Tenth Justice: The Solicitor General and the Rule of Law* (1987).

Arleen Beale was evicted from her home for the first time when she was twenty-two. During the next sixteen years, she rented twenty places to live and was evicted repeatedly. She was thirty-eight in January of 2008, when the sociologist Matthew Desmond was observing her life and the lives of other poor people in Milwaukee, Wisconsin, to understand the trauma they were experiencing because of poverty. She was evicted from an apartment after her thirteen-year-old son and his cousin threw snowballs at one passing car too many. The driver stopped, chased the boys to the apartment, and kicked down the door. The damage led the landlord, after only eight months, to evict Arleen (a pseudonym to protect her privacy) and her two boys. Her younger son was five.

They moved to a homeless shelter until April and then to a house where the water was regularly turned off. The rent was \$525 a month: 84 percent of her monthly stipend from a Wisconsin family-aid program. The city found the house “unfit for habitation” so Arleen and the boys had to move again, this time to an apartment complex known

© 2019 by Lincoln Caplan
doi:10.1162/DAED_a_00531

as a haven for drug dealers. The new rent took 88 percent of her stipend.

Arleen fell behind on the rent in her second month there: she was short of cash after the state reduced her stipend when she missed an appointment with her welfare caseworker, and she spent half the stipend on the funeral of one of her sisters. Her landlord decided to evict Arleen because she would never be able to make up the \$875 she owed in back rent. Two days before Christmas, her eviction hearing was held in Milwaukee's small-claims court. Most of the tenants with hearings that day were black women, including Arleen. Black women were only about 10 percent of the city's population, yet made up 30 percent of the city's formally evicted tenants.¹ The percentage was higher if you counted informal evictions, like when a landlord wanted a tenant out without a basis for evicting her so he paid her to move.²

When a tenant has a lawyer in small-claims court, she is much more likely to get a favorable outcome. Legal Action of Wisconsin offers the Eviction Defense Project to low-income tenants in Milwaukee County who are facing eviction. The representation provided is limited in scope, meaning that volunteer lawyers trained by Legal Action provide representation to one or two clients each shift, in what the organization calls "a lawyer-for-the-day pro bono opportunity." Since the Eviction Defense Project began in January of 2017, its clients have fared notably better than other tenants in Milwaukee.

Christine Thompson, who was twenty-six, and her two sons, seven and three, were beneficiaries of the program. For seven months in an apartment owned by a man she was in a relationship with, they had lived rent-free as tenants at will. Either she or he could end the tenancy at any time. When she ended the relationship in 2017, he tried to end the tenancy.

He gave her five days' notice to vacate the apartment and filed a lawsuit against her alleging that she owed \$3,175 of past rent, although, among other problems, the apartment was infested with cockroaches and bedbugs, requiring Thompson to get rid of many of her family's belongings.

She had to appear in court three times, and each time had a different volunteer lawyer. The first time, the lawyer didn't succeed in working out a settlement with the landlord, but was successful in arguing before a court commissioner that a tenancy at will required twenty-eight days' notice and that the case warranted trial before a judge. The second time, the judge delayed trial for six days after the lawyer explained that Thompson had filed for bankruptcy, which warranted additional time for preparing arguments because wiping out her debts could keep the landlord from pursuing the eviction. The third time, the lawyer got the case dismissed and the record of it sealed, so Thompson would not have an eviction action against her to explain when looking for a new apartment.

No landlord would rent to her when the eviction proceeding and the lawsuit were pending. But ten days after the case was dismissed and the record sealed, she was in a new apartment, with money for the first and last months of rent and for a security deposit from a GoFundMe account set up after her case was publicized on public radio. She had been working as a server at a fast-food restaurant. She took a new job at a Ramada Inn as a server and a housekeeper and a second job at a company that tracks inventory for chain stores. About the new place, she said, "It's a whole lot better. No bugs. No other big problems. It's pretty nice. We feel secure."

Arleen Beale's case left her feeling the opposite. She went to her hearing unrepresented. The hearing officer was the

chief judge of the Milwaukee County trial court.³ The judge was smart, with a record of fairness, but her job was to be a neutral arbiter, not to protect Arleen's interests.

When Arleen confirmed she was behind on rent, the judge proposed a settlement that would avoid putting another eviction on her record. The trade-off was that Arleen had to move out within a week. If she had had legal counsel, the lawyer could have negotiated a better deal and had her eviction record sealed. But tenants with lawyers in court were exceedingly rare.⁴

A national database of unsealed evictions gives them the same destructive power as criminal convictions: it provides an excuse for a prospective landlord to reject a tenant. Desmond wrote, "As landlords like to say, 'I'll rent to you as long as you don't have an eviction or a conviction.'"⁵ He concluded, "The blemish of eviction greatly diminishes one's chances of securing affordable housing in a decent neighborhood, stymies one's chances of securing housing assistance, and often leads to homelessness and increased residential mobility."⁶ Eviction, in other words, is a pitiless cause of poverty, not just a cruel effect.

Arleen's landlord didn't have a lawyer either, which was unusual since 90 percent of landlords have lawyers in eviction hearings. But she was savvy about landlord-tenant law and accepted the deal when Arleen promised to leave before the new year. In the following months, Arleen tried and failed to get a new apartment eighty-nine times.⁷ She and her boys lived for almost another month in a shelter (a month was the maximum time allowed).

On the ninetieth try, Arleen finally got an apartment and they moved in, until her older son kicked a teacher at school (his fifth school in two years because of all the moves) and the landlord asked Arleen to

move again. For six weeks, they lived in a bedroom of a girlfriend's apartment, where the friend turned tricks for cigarette money. They ended up moving back to a shelter, with Arleen and the boys often hungry and broke. In *Evicted: Poverty and Profit in the American City*, Desmond describes what these losses were reducing them to: "she was teaching her sons to love small, to reject what they could not have."⁸

The lives of poor people are generally smaller: harder, sadder, and shorter. Many suffer from anxiety, depression, and other mental illnesses that go untreated along with physical ones. They can't afford to have regular check-ups, so doctors and dentists don't catch health problems that could be treated to stave off a crisis. They don't get treatment for problems they are aware of, which often get worse. Because of erratic, often sugar-filled diets, they are more likely to get diabetes and, as a result, to lose a limb or go blind. The consequences of poverty are well-known.

Yet the effects on the lives of people who are poor and struggling economically and who need help in solving a legal problem and don't get it are not well documented or understood. Desmond, a Princeton professor and a MacArthur and Pulitzer Prize winner, wrote a brilliant case study of Arleen's predicament, but he was foremost reporting on poverty, not focusing on the need for this kind of legal help. In his account about the relentless trauma of grinding poverty, there are scores of characters. Few are lawyers or legal problem-solvers, because few of the people he reported on had their help. Legal help can reduce the number of evictions, ease the consequences when they happen, and attack the causes. Countless other distresses for tens of millions of poor and low-income people bring the

same kind of misery. Lawyers or other problem-solvers can reduce that suffering by attaining some degree of justice.

These distresses and miseries are rarely in the news or even in the deeper form of news reported by scholars like Desmond. Of moments like Arleen's in small-claims court, there is no equivalent of Dorothea Lange's 1936 "Migrant Mother" photographs of Florence Owens Thompson, which made the Great Depression visible and indelible. Thompson, then thirty-two, looks much older in Lange's most renowned portrait of her. She looks desperate. She told Lange that she and her children, then in a migrant camp, "had been living on frozen vegetables from the surrounding fields, and birds that the children killed."

Lange worked in the tradition of Jacob Riis, whose muckraking photographs of New York City slums and sweatshops in the Gilded Age showed "How the Other Half Lives" and provided a model for generations of other photographers. John Dominis was one of them. A combat photographer during World War II, he became a celebrated photographer for *Life*, America's leading picture magazine for a generation beginning in 1950. In 1964, the magazine published his photo essay "The Valley of Poverty" about people living in the broken hollows of Eastern Kentucky. The photographs recorded what the essay's text called

an impoverished people whose plight has long been ignored by affluent America. Their homes are shacks without plumbing or sanitation. Their landscape is a man-made desolation of corrugated hills and hollows laced with polluted streams. The people, themselves – often disease-ridden and unschooled – are without jobs and even without hope.⁹

Dominis's photographs helped propel one of the country's most progressive

policies of the past century. A few months after *Life* published them, President Lyndon B. Johnson went to the area Dominis had photographed to publicize his administration's war on poverty. The main instrument for carrying out this legislation was the Office of Economic Opportunity (OEO), which soon included a legal component designed to ensure that the campaign to increase the income and opportunity of America's poor would serve their interests as they understood them, and not necessarily as the government did. Its job, explained OEO Legal Services director E. Clinton Bamberger Jr. in a speech in 1965, was "to provide the means within the democratic process for the law and lawyers to release the bonds which imprison people in poverty."¹⁰

How is it possible that legal problems of the poor and the economically struggling have become invisible? Politics over the past half-century has made them so.

Searing photographs of the poor are plentiful – the writer Adam Haslett called them "a morally indignant anthropology"¹¹ – and the images played a significant part in launching the war on poverty and, indirectly, the Legal Services program that grew out of that effort.

Earl Johnson Jr., who succeeded Bamberger as the program's director and later became a California judge, reported in 1968 that the program had funded "250 locally-operated programs in forty-eight states" that had "set up 850 Neighborhood Law Offices" and hired "more than 1,800 full-time attorneys." There were "almost as many lawyers" in Legal Services projects than were "employed by the United States Department of Justice and all of the United States Attorneys Offices around the nation."

These offices provided legal aid to the poor. They also sought to reform law that penalized people for being poor. Before

the Legal Services program, during the near-century that legal aid had existed in the United States as a largely voluntary effort by a small minority of lawyers, the Supreme Court heard one case brought by a legal-aid lawyer. Between 1965 and 1974, Legal Services lawyers became the voice of the poor at the Court – often, a persuasive one. The Supreme Court accepted 64 percent of the cases the Legal Services lawyers asked them to, a remarkably high rate. Of the 110 cases considered, they won 62 percent, with conservative justices supporting those victories as often as the liberals.

The landmark victories included:

Shapiro v. Thompson, where the Court struck down state residency requirements for obtaining welfare benefits, ruling that it was unconstitutional to deny them “to otherwise eligible applicants solely because they have recently moved from state to state or to the District of Columbia”;¹²

Sniadach v. Family Finance Corporation, where the Court struck down the practice of garnishing the wages of an alleged debtor before a hearing had determined that the person owed any money;¹³ and

Goldberg v. Kelly, where the Court ruled that officials could not terminate a recipient’s welfare benefits without giving notice or providing the opportunity to challenge the termination in a hearing:

[the] interest of the eligible recipient in the uninterrupted receipt of public assistance, which provides him with essential food, clothing, housing, and medical care, coupled with the State’s interest that his payments not be erroneously terminated, clearly outweighs the State’s competing concern to prevent any increase in its fiscal and administrative burdens.¹⁴

Legal Services lawyers developed a new field of poverty law while often obtaining justice in individual cases.

From the beginning, however, the Legal Services program faced angry opposition from lawyers, bar associations, and politicians where the program funded legal aid, and from members of Congress. The favorite punching bag was California Rural Legal Assistance (CRLA), a network of offices in rural parts of the state set up to represent migrant farm workers against agribusiness, to which the program gave a million-dollar grant (about \$7.5 million today). Ronald Reagan, as California’s governor, vehemently opposed the network and the legal counsel it provided. This campaign helped catapult him to national power.

The State Bar of California joined him in opposition, on grounds that CRLA represented “militant advocacy on a statewide basis of the contentions of one side of an economic struggle now pending.”¹⁵ In response, Sargent Shriver, who led the Office of Economic Opportunity, ribbed the state bar’s president: “Look, I’ll make an agreement with you. If you will agree that no lawyers in California will represent the growers, I will agree that no legal services people will represent the pickers.”¹⁶

Shriver’s joke captured the essence of the access that Legal Services lawyers were providing, but that wasn’t what concerned their opponents. The California bar portrayed Legal Services as anti-capitalist. The only vindication of the bar’s view would be elimination of Legal Services’ part in reforming law that penalized people for being poor. The bar’s premise – that lawyers had the ability to reduce poverty or even end it by diminishing capitalism – was surely wrong. Legal Services lawyers made a serious mistake in not challenging that premise. Poverty in America is a product of the combination of capitalism and a limited welfare state. No amount of creative lawyering can eliminate poverty.

As Clinton Bamberger explained, the program's view of the Legal Services lawyer's role was that the "poor are least equipped with the resources and resilience to obtain fair treatment" and "competent advocacy in the form of a lawyer – an articulate friend – can improve the lot and dignity of the poor. The OEO seeks the achievement of some greater approximation of equal justice for the poor – equal significance as human beings – than has ever been achieved before." He went on,

Lawyers must excise the evils that prey on the poor – challenge that minority of disreputable and unethical businessmen until their values and their actions conform to the high standards of the remainder of the commercial community and pierce the complacency of those federal and state bureaucrats who administer benefit programs arbitrarily on the premise that what the statute calls a right is really only a privilege subject to their Olympian discretion.¹⁷

Opponents of the program successfully yoked these aspirations of Legal Services lawyers to a threat to capitalism itself. To shield capitalism, opponents sought to prohibit Legal Services lawyers from using law reform and other tactics to create a larger political coalition to work on reducing inequality and poverty. Legal Services lawyers did a poor job of articulating their role in that effort, but their opponents likely would have rejected any positive account of the Legal Services vocation, because challenges to "evils that prey on the poor" were challenges to entrenched power.

The hostilities led, in 1974, to the creation of the Legal Services Corporation (LSC) as an independent organization funded largely by the federal government. Its purpose is to award grants to organizations providing legal aid to people who

lack money to pay for lawyers as a means of solving problems – but no longer with the aim of alleviating, let alone eliminating, poverty.

In the final year of the presidency of Jimmy Carter, the LSC budget reached its high point, allowing it to support 325 grantees, with 1,450 offices and 6,200 lawyers. But in 1981, after Reagan defeated Carter to become president, he brought his antipathy to Legal Services to the White House. His team submitted to Congress a zero-budget request for the LSC to shut them down. As an independent agency, the LSC submitted its own request for an increased budget. With some political wrangling, the organization ended up with a 25 percent cut in funding.

The law establishing the LSC mentioned neither the poor nor poverty; it alluded only glancingly to that profound challenge and to those who endure it: "there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program."¹⁸ Instead, the law focused on the "need to provide equal access to the system of justice," now shortened to "access to justice."

In a rule-of-law nation, relying on a constitution to ensure equal justice, this was arguably the more ambitious choice, embracing the prospect of protecting low-income as well as poor Americans from exploitation. It was a choice about justice, not only politics. Yet the LSC law did what the law in general as an expression of the limits of political will has often done: it shifted attention from a substantive, morally defined end, to neutral-seeming means of process. That allowed the nation to pat itself on the back for its commitment to equal justice while freeing itself from providing an integral part of what that entails. The law separated the

American commitment to providing legal services for people who are struggling economically from concern about economic hardship.

In 2014, Earl Johnson Jr. published a three-volume work called *To Establish Justice for All* in which he told the story of the nation's and the legal profession's failure, since the beginning of the war on poverty, to provide equal justice for the poor with the same success and broad commitment as for the rich. In his words, it is "the story behind our nation's tardy and as yet unfinished effort to make those people unable to afford lawyers equal to those who can – and thus for the first time to establish justice for that segment of the population."

On the one hand, he recounted, this unfinished effort is the result of "a contest over two visions of what poor people deserve in the way of legal aid. To analogize to health care – should the government only provide them a network of first aid stations or should it also give them access to specialists and hospitals when they have serious illnesses." The former are called "everyday" or "routine" problems. The latter involves "impact work" or "high-quality legal services," "promoting measures" for the protection of the poor and others struggling economically.

On the other hand, for the last half-century, "legal aid for poor people has been a major political and ideological battleground, a target of nearly constant assaults from the right wing of U.S. politics as well as some powerful politicians and wealthy campaign contributors."¹⁹

The political and ideological struggle has been between two relatively small groups who believe fervently in the rightness of their opposing views, with a vast group in between who are indifferent and have over the past half-century moved considerably to the right in their politics. That description applies to the American

body politic and to the American legal profession.

Still, gloomy as that picture is, it understates the challenge for anyone convinced that increased access to justice for the poor and those who are economically struggling should be a central American aim. In the past half-century, attacks of the right on the provision of this access have rested on the triumph of laissez-faire views: the fresh embrace of markets and the free-enterprise system. This began as an assertion of the need for reinvigorated competition in business in the 1970s and 1980s. It grew to become the dominant ideology in American politics.

The upshot is the winner-take-all economy of the past generation. This phenomenon has had the aura of economic destiny, as if the resulting extreme inequality is the product of beneficent economic freedom. But winner-take-all politics has brought it about. That entails the substantial shift to the right of both major political parties, the majority's support for tax, investment, and other policies favoring the wealthy, and the resistance to economic redistribution: to reducing inequality and its consequences, including by making rules of society fairer and their consequences more equal.

The current state of the legal marketplace reflects this phenomenon: The wealthy can afford to hire a lawyer when they need one. The well-off can afford to do so with budgeting. Except for hiring a lawyer to handle a limited transaction like buying or selling a house, relatively few others can. The marketplace has failed and, in the ongoing winner-take-all politics, improved access to justice is a nonissue, despite the difference it would make in many of the lives of the one hundred million or more Americans who face a serious civil legal issue each year. That is five times the number who benefited

from the Affordable Care Act, which was the most fiercely debated social legislation of the past generation.

In the microclimate of the politics about funding legal services, it was positive that the Republican-controlled board of the Legal Services Corporation during the George W. Bush administration was earnestly committed to the improvement of legal services, and laid the foundation for efforts by the Democrat-controlled board during the Obama administration to make the LSC the best-run version of itself in the history of the organization.

But the form of legal services at stake addresses “everyday” or “routine” problems. It largely excludes reform, or impact, work. The LSC supports an essential method of solving problems, but without the means of producing significant enforcement of existing legal rights or the aim of addressing poverty and economic hardship. By law, legal-aid organizations receiving LSC grants can’t take part in class action lawsuits. They can’t get involved in litigation or other activities about immigration, abortion, assisted suicide, desegregation of public schools, or civil rights of prisoners, the LSC itself, or (with narrow caveats) criminal cases. They can’t engage in legislative or regulatory lobbying, political activities like voter registration and promoting ballot measures like referendums, or welfare reform. They can’t engage in or encourage public demonstrations, picketing, boycotts, or strikes.

The restrictions are meant to keep legal-aid organizations focused on solving legal problems for individuals and families. They are meant to keep them from engaging in collective action to reform laws and public policies, from representing large groups of people in lawsuits challenging government agencies or major corporations, and from taking sides in disputes about the most divisive social

issues. They are intended to safeguard the status quo, which harms people who are poor or struggling economically.

In 2017, the LSC released its important report about “the justice gap”: the difference between low-income Americans’ need for help in dealing with calamitous legal matters and the resources available to provide that help.²⁰ Despite the high incidence of these problems and their often-devastating consequences, in nearly nine out of every ten instances, the people involved lacked the help of a lawyer or other problem-solver, leaving them at the mercy of courts and other government agencies with byzantine rules, insufficient resources, and short supplies of mercy.

The organization is punctilious about documenting growth in the distance between the goal of providing justice in the form of legal representation for poor and low-income Americans and the realization of that goal. But the combination of the struggle in vain of American Legal Services lawyers to meet the nation’s needs and the triumph of the conservative resistance to redistribution makes clear how triumphant the resistance has been. Even among leading advocates for redressing inequality, improved access to justice is barely on the agenda.

Access to justice has been separated in both rhetoric and reality from its fundamental purpose: ameliorating the economic insecurity and inequality at the core of the problem. By law, the LSC cannot directly concern itself with this fundamental justice gap, which has left the nation with a yawning justice problem.

In 2016, the American Bar Association (ABA) released its *Report on the Future of Legal Services in the United States*, the product of a two-year study by an ABA commission.²¹ A reader would be forgiven for thinking that the report was about

the issue of access to justice. The report presents the access issue as a subset of the larger issue that the report addresses: the future of legal services in general in the United States, not only legal services for poor and economically struggling Americans.

A premise of the report is that the United States cannot solve the access-to-justice problem without understanding the state of the American legal profession and identifying where the access problem fits among the major problems facing the profession.

These problems include: the malfunctioning of the market for legal services in the United States, with many lawyers “unemployed or underemployed despite the significant unmet need for legal services”; the overburdened and often malfunctioning systems of state courts, in part because the “vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation”; the transformation of this rule-of-law country into one frustrated by the rule of often arbitrary-seeming rules, in a system designed by lawyers for lawyers; and the undermining of public trust and confidence in the system and in the profession by the latter’s lack of diversity: of 1.3 million members of the bar in 2015, 88 percent were white and 12 percent minority, compared with the country’s population, which was 77 percent white and 23 percent minority.²²

Each of these problems is real and serious. The report is well-done and useful. But as Rebecca Sandefur writes in this issue of *Dædalus*, “Lawyers’ fundamental interest is in maintaining their rights to define and diagnose people’s problems as legal, and to provide the services that treat them.” The ABA report acknowledges that the profession’s monopoly on legal services limits useful problem-solving for poor, low-income, and moderate-income

individuals and families: “The legal profession’s resistance to change hinders additional innovations,” the report says, including services by nonlawyers. The report strongly promotes innovations in technology that could displace lawyers. Yet the impression it leaves is that the legal profession cannot solve the access problem until it gets its own house in order. Even if unintentionally, that puts the interests of lawyers first.

In the half-century that the access problem has been left to lawyers to solve, the problem has gotten measurably worse, despite first-rate leadership of the LSC, substantial commitment of leading law firms and growing commitment of major corporations to the provision of pro bono legal services as a supplement to the work of legal-aid offices, growth in the use of technology to make legal-aid lawyering more efficient, and other positive steps. Most poor and low-income Americans, as well as the majority of moderate-income Americans, “do not receive the legal help they need.”

Politics over the past half-century has all but made these problems invisible, with the legal profession failing to make them visible again.

For access to justice to be a priority of a national movement, it needs champions in national politics, not just in the legal profession and among its allies. It needs champions who regard greatly increased and improved access as a primary commitment, not one of a list of needs whose fulfillment depends on solving a host of other problems of the legal profession. That is the conviction on which this *Dædalus* issue rests, as John Levi and David Rubenstein explain in their introduction.²³

The purpose of access to justice is to ensure that people disadvantaged economically are not disadvantaged legally. That

entails: providing those who can use them effectively with information about the workings of the law and tools for navigating the legal process; changing legal procedures and proceedings and substantive law so they are only as complicated as they need to be and can be managed more easily by nonlawyers; deregulating some legal services, so consumers have access to more assistance and more advocacy from nonlawyer problem-solvers; reforming legal education so more law-school graduates are prepared to provide legal services and more can afford to take legal-services jobs; expanding the opportunities for non-legal services lawyers to take on legal-services representations; greatly increasing the public and philanthropic support for legal services; removing the bans on class actions and other forms of litigation and policy-making that penalize people for being poor; greatly strengthening state court systems; challenging corporate leaders to end forced arbitration and let their customers and employers use those systems to fight alleged corporate wrongdoing;

and according anyone without resources, as they deal with the challenge of a divorce, a natural disaster, a fraudulent telemarketer, or a health crisis, for example, the same dignity and respect as someone who is wealthy.

In *Winner-Take-All Politics*, the political scientists Jacob S. Hacker and Paul Pierson counsel that reversing the “economic hyper-concentration at the top” will require engaging in politics many more people “whose voices are currently drowned out”; developing new capacity “to mobilize middle-class voters and monitor government and politics on their behalf”; and reducing the ability of “entrenched elites to block needed reform.”²⁴

For the access-to-justice issue to become salient again, it must become part of this effort. A key aspect of the agenda must be greatly increased and improved services for the poor, the economically struggling, and others who need help in solving a legal problem, and services to reform laws and other policies that penalize people for being poor. They must become visible again.

ENDNOTES

- ¹ Matthew Desmond, “Poor Black Women are Evicted at Alarming Rates, Setting Off a Chain of Hardship,” policy research brief (Chicago: MacArthur Foundation, 2014), https://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.
- ² Ibid.
- ³ “Laura Gramling Perez: Biography,” *Urban Milwaukee*, <http://urbanmilwaukee.com/people/laura-gramling-perez/>.
- ⁴ In 2016, the Milwaukee small-claims court had 13,457 eviction cases. Lawyers represented tenants in just 112 of them—less than 1 percent. In about 70 percent of the cases, often because the tenants were convinced the system was rigged, they didn’t even appear at their hearings. In 2017, the Eviction Defense Project increased the number of tenants with representation by about five hundred, making the total with lawyers about 4.5 percent of all tenants in court.
- ⁵ Desmond, “Poor Black Women are Evicted at Alarming Rates.”
- ⁶ Matthew Desmond, “Eviction and the Reproduction of Urban Poverty,” *American Journal of Sociology* 118 (1) (2012): 88–133, <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

- ⁷ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016).
- ⁸ *Ibid.*, 240.
- ⁹ John Dominis, "The Valley of Poverty," *Life*, January 31, 1964.
- ¹⁰ Earl Johnson Jr., *To Establish Justice for All*, vol. 1 (Santa Barbara, Calif.: Praeger, 2014), 85.
- ¹¹ James Agee and Walker Evans, *Cotton Tenants: Three Families*, ed. John Summers (Brooklyn: Melville House Publishing, 2013), 14.
- ¹² Johnson, *To Establish Justice for All*, 170.
- ¹³ *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).
- ¹⁴ *Goldberg v. Kelly*, 397 U.S. 254 (1970).
- ¹⁵ Johnson, *To Establish Justice for All*, 99.
- ¹⁶ *Ibid.*, 100.
- ¹⁷ E. Clinton Bamberger, "Legal Services Program of the Office of Economic Opportunity," *Notre Dame Law Review* 41 (6) (1966): 847–848.
- ¹⁸ Legal Services Corporation Act, 42 U.S.C. § 2996b (1974); see <https://www.lsc.gov/about-lsc/laws-regulations-guidance/lsc-act>.
- ¹⁹ Johnson, *To Establish Justice for All*, prologue.
- ²⁰ Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (Washington, D.C.: Legal Services Corporation, 2017).
- ²¹ American Bar Association Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* (Chicago: American Bar Association, 2016).
- ²² *Ibid.*, 5, 31.
- ²³ John G. Levi and David M. Rubenstein, "Introduction," *Dædalus* 148 (1) (Winter 2019).
- ²⁴ Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics* (New York: Simon and Schuster, 2011), 303.