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## Book Review [Legal Breakdown: 40 Ways to Fix Our Legal System]

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## BOOK REVIEW

LEGAL BREAKDOWN: 40 WAYS TO FIX OUR LEGAL SYSTEM, By Nolo Press eds., Berkeley, CA, Nolo Press, 1990. Pp. 88. Paperback. \$8.95.

*Reviewed by Margalynne Armstrong\**

The public and the Bar are asking serious questions about the legal profession and its role in United States society. There is no shortage of critics of our legal system, both within and outside of the profession.<sup>1</sup> Some critics focus on the role of attorneys as defenders of individual rights and interests and find the profession is not accessible to many people who desperately need legal assistance.<sup>2</sup> Others view attorneys as obstructionists of economic activity and are appalled at the profession's prevalence. Consensus exists only in the low regard for the legal profession.<sup>3</sup>

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1. The form of the debate, however, may not be conducive to meaningful discussion. Much of it occurs on a television news soundbite or within a game of dueling headlines. For example, the cover of a popular news magazine recently carried a headline asking, *Do We Have Too Many Lawyers?* TIME, Aug. 26, 1991. Shortly thereafter the cover of a national magazine for attorneys addressed the same issues by trumpeting a special report entitled *Lawyer Bashing: Back With A Vengeance*, A.B.A. J., Oct. 1991. Much of the current debate was instigated by Vice President Quayle's criticisms of the legal profession at the 1991 American Bar Association convention. See discussion *infra* notes 5, 6 & 10.

2. For example, every year millions of legal problems go unaddressed for the poor in New York. *New York's Poor Face Nearly Three Million Legal Problems a Year Without Legal Help*, WALL ST. J., Oct. 19, 1989, at B8.

3. A recent public opinion poll ranked lawyers as the sixteenth sleaziest profession, right behind oil company executives. James Patterson & Peter Kim, *The Day America Told the Truth*, S.F. CHRON., Aug. 23, 1991, at E3. See also John Sansing, *The Business of Lawyers Is-Lawyers*, S.F. CHRON., Feb. 17, 1991, (This World), at 12.

It is fascinating to compare some contrasting depictions of the legal system's problems. One perspective is presented by Professor Patricia Williams, writing of a memory from her first job after law school:

I walked through the halls of the Los Angeles Criminal and Civil Courthouses, from assigned courtroom to assigned courtroom. The walls of every hall were lined with waiting defendants and families of defendants, almost all poor, Hispanic and/or Black. As I passed, they stretched out their arms and asked me for my card; they asked me if I were a lawyer, they called me "sister" and "counselor."

I think what I saw in the eyes of those who reached out to me in the hallways of the court-house was a profoundly accurate sense of helplessness—a knowledge that without a sympathetically effective lawyer (whether judge, prosecutor or defense attorney) they would be lining those halls and those of the lockup for a long time to come.<sup>4</sup>

Compare the viewpoint of Vice President Dan Quayle, the chair of the President's Council for Competitiveness.<sup>5</sup> In August 1991, he lambasted the legal profession at the American Bar Association's annual convention. Quayle pronounced that the United States has too many lawyers and too many lawsuits. From his vantage point the problem with the nation's legal profession is that it stifles the nation's economic competitiveness with other, less litigious countries.<sup>6</sup>

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4. Patricia Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 402, 403-04 (1987).

5. See David S. Broder & Sandra Torrey, *ABA President Disputes Quayle on Litigation Proposals*, WASH. POST, Aug. 14, 1991, at A1. The Council's Federal Civil Reform Group has developed a 50-point agenda. PRESIDENT'S COUNCIL ON COMPETITIVENESS, AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA (1991) [hereinafter AGENDA].

6. David Margolick, *Address by Quayle On Justice Proposals Irks Bar Association*, N.Y. TIMES, Aug. 14, 1991, at A1. Quayle specifically complained about the competitive impact of the high number of product liability suits against major corporations and about punitive damages. Julie Johnson & Ratu Kamlani, *Do We Have Too Many Lawyers?*, TIME, Aug. 26, 1991, at 54. Quayle's analysis does not seem to recognize that foreign corporations are also subject to both product liability suits and punitive damages for products that reach United States markets. Both the *New York Times* and *Time* magazine articles include a chart comparing the number of attorneys in the United States and foreign countries, including Japan. These comparisons between the number of attorneys in the United States and countries such as Japan are misleading. The estimates do not include the majority of legal

About a week after the Vice President criticized the overabundance of lawyers, newspapers reported that almost one hundred inmates in the Baltimore City Detention Center had been held for lengthy periods without being formally accused,<sup>7</sup> reaching a high of 500 days in one case.<sup>8</sup> The opposing views of Professor Williams and Vice President Quayle dovetail in the Baltimore detentions. Where was the sympathetically effective lawyer for these people when they suffered the wrongful incarceration? Although they were unable to obtain legal representation to help get them released from jail, scores of attorneys will be willing to represent the Baltimore prisoners in the civil suits that will deservedly be filed against the Detention Center officials.<sup>9</sup>

The malfunctioning civil legal system has been the focus of several proposals for change. In contrast to Vice President Quayle's Council on Competitiveness' Agenda for Civil Justice Reform, which seeks to decrease public access to the courts,<sup>10</sup>

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professionals in Japan, but reflect only the *bengoshi*, those admitted to the Japanese Bar. Japan's legal professionals include many non-licensed practitioners who perform the same functions that non-litigating attorneys perform in the United States. Mark A. Levin; *What Statistics on Japan's Lawyers Mean* (Letter to the Editor) N.Y. TIMES, Aug. 23, 1991, at A26. See also Joan Virginia Allen, *The Japanese Judicial System*, 12 SAN FERN. V. L. REV. 2 (1984).

7. *100 Inmates in Baltimore Jail Were Detained Without Charges*, N.Y. TIMES, Aug. 16, 1991, at A12.

8. Paul W. Valentine, *Inmate Forgotten in Baltimore Jail*, WASH. POST, Aug. 24, 1991, at B3.

9. Civil suits generate damages or settlements, portions of which can be used to compensate the lawyers under a contingency fee arrangement.

10. A number of the Agenda's proposals are designed to weed out litigation which the council deems "needless" and to limit access to the federal courts. Council Recommendation 41 would discourage individuals from bringing cases against the federal government as "private attorney generals" by imposing a moratorium on statutes that award attorneys fees only to the party who initiated the lawsuit and subsequently prevails. AGENDA, *supra* note 5, at 25. See AMERICAN BAR ASSOCIATION, BLUEPRINT FOR IMPROVING THE CIVIL JUSTICE SYSTEM 89 (1992).

Recommendation 44 would increase the amount in controversy required to invoke diversity jurisdiction by looking only at the amount plaintiff demands for economic damages. AGENDA, *supra* note 5, at 26. Recommendation 47 would reform the Civil Rights of Institutionalized Persons Act (AGENDA, *supra* note 5, at 27) while Recommendation 48 would (among other restrictions) set a six-month statute of limitations in all post-conviction applications in capital cases. AGENDA, *supra* note 5, at 28. The American Bar Association has examined this last proposal and concluded: "In view of the need to conduct extensive factual and legal investigations, a six month statute of limitations is grossly inadequate and would hinder efforts to recruit lawyers to represent death row inmates." AMERICAN BAR ASSOCIATION, BLUEPRINT FOR IMPROVING THE CIVIL JUSTICE SYSTEM 94 (1992).

is a recent Nolo Press publication, *Legal Breakdown: 40 Ways to Fix Our Legal System*.<sup>11</sup> *Legal Breakdown* analyzes legal reform from another perspective, suggesting ways to make the legal system more available to the general public and less lucrative for lawyers.<sup>12</sup>

Nolo's book is written from the vantage point of knowledgeable consumers who are disappointed in the way our legal system treats the average person. Although many of Nolo's editors are lawyers, they bear little love for their profession.<sup>13</sup> Nolo's perceptions seem aligned with that of a public that is experiencing a "growing feeling that the profession is becoming tilted toward the commercial rather than the service component of what the profession is supposed to be."<sup>14</sup> Although

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11. NOLO PRESS, *LEGAL BREAKDOWN: 40 WAYS TO FIX OUR LEGAL SYSTEM* (1990) [hereinafter *LEGAL BREAKDOWN*]. *LEGAL BREAKDOWN* primarily analyzes the civil court system in the United States. This review makes reference to public perceptions of attorneys based on both criminal and civil practitioners. The American myth of the attorney, discussed *infra* note 13, seems rooted in the criminal defense attorney (Perry Mason) or in the general practitioner, capable of providing criminal representation yet willing to take on "a giant faceless corporation on behalf of the individual." See Sansing, *supra* note 3. A real life example is Abraham Lincoln in the "Almanac Trial" (People v. Armstrong) and the Effie Afton case (Hurd v. The Rock Island Bridge Co.). JOHN J. DUFF, A. LINCOLN, *PRAIRIE LAWYER*, 332, 350 (1960).

12. It should be noted that Nolo shares some of the same criticisms as the Council on Competitiveness. For example, both authors criticize punitive damages and both promote the use of alternative dispute resolution techniques. *LEGAL BREAKDOWN*, *supra* note 11, at 39, 57. Suggestions 25 and 16, ("Do Away with Punitive Damages," "Take Divorce Out of Court"). See Recommendation 1, *AGENDA*, *supra* note 5, at 15 and Recommendation 29, *AGENDA*, *supra* note 5, at 22-23.

13. The disillusionment felt by the public and members of the Bar, such as Nolo's editors, may result from the contradiction between reality and an idealized picture of lawyers once presented by television, literature and the Bar itself. Examples include films such as *Inherit the Wind*; in literature and film the noble Atticus Finch of Harper Lee's *To Kill a Mockingbird*; on television "altruistic do-gooders like Owen Marshall and The Defenders." David S. Machlowitz, *Lawyers on T.V.*, A.B.A. J., Nov. 1, 1988, at 52. Until fairly recently, the narrative (the apocryphal stories about a people or group that shape the public's perceptions about the group) of the American legal profession constructed an ideal attorney, "the fearless advocate who champions a client threatened with loss of life and liberty by government oppression." Geoffrey C. Hazard, Jr., *The Future of Legal Ethics*, 100 *YALE L.J.* 1239, 1242-43 (1991). But this image does not correspond to real life. Modern law practice has been described as "the development and protection of business property." *Id.* at 1241.

14. Kenneth Jost, *What Image Do We Deserve?*, A.B.A. J., Nov. 1988, at 47, 48. A recent circular from the Society of American Law Teachers reflects similar observations: "The commitment of members of the legal profession to contribute to social good is being eclipsed by self-interest and the desire for financial gain."

an American Bar Association task force asserts that the legal profession has a "responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them,"<sup>15</sup> only nineteen percent of the nation's attorneys participate in formal pro bono programs.<sup>16</sup> It is now unrealistic to expect that an individual without financial resources will have access to a "sympathetically effective lawyer." Thus, the public is unhappy with the legal profession because it is too business oriented and too many people are shut out from the system, while the criticisms from our Vice President and corporate leadership are based on perceptions of an overabundance of access and failure to accommodate the needs of business.

One result of the public's widespread disappointment in lawyers has been the emergence of populist legal movements. The self-help legal movement provides access to legal information and empowers non-attorneys to represent themselves in simple legal matters. During the past twenty years, the authors of *Legal Breakdown* have been at the forefront of providing information about the law to non-lawyers. Nolo Press has published numerous self-help manuals that guide people through the legal system.<sup>17</sup> In *Legal Breakdown*, Nolo approaches the public's interaction with the law from a different perspective. *Legal Breakdown* specifies ways in which the American civil judicial system fails the public and then presents ideas for reclaiming the courts for the benefit of the citizenry. *Legal Breakdown* is addressed to the legal establishment as well as the legal consumer.

*Legal Breakdown* consists of forty suggestions (with accompanying commentary) for improving the law, litigation and the judicial system. Most of the suggestions can generally be grouped into two categories: (1) simplifying and improving access to justice<sup>18</sup> and (2) decreasing the number of attorneys and eliminating barriers to legal access imposed to protect the

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SOCIETY OF AMERICAN LAW TEACHERS, PRIVATE GAIN OR PUBLIC INTEREST: THE STRUGGLE FOR THE SOUL OF AMERICAN LEGAL EDUCATION, (1991 Conference for Legal Educators Brochure) 1991 [hereinafter PRIVATE GAIN].

15. *Draft Statement of Fundamental Lawyering Skills and Professional Values*, A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION (1991). See also MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-225 (1980).

16. PRIVATE GAIN, *supra* note 14.

17. LEGAL BREAKDOWN, *supra* note 11, at 5.

18. See discussion *infra* section I.

financial interests of attorneys.<sup>19</sup> A handful of the suggestions involve revamping specific regulatory agencies or substantive rules.<sup>20</sup>

### I. SUGGESTIONS TO INCREASE ACCESS TO THE CIVIL LEGAL SYSTEM

More than half of the recommendations in *Legal Breakdown* involve expanding the public's access to the law and improving the way people are treated once they get into the system.<sup>21</sup> Like most Nolo offerings, a basic premise of the work is that private citizens should be able to take care of their own basic legal needs or to turn to inexpensive paralegal assistance instead of high-priced attorneys.<sup>22</sup> Nolo dislikes the fact that it is difficult for a lay person in the United States to go into a court room and represent herself.<sup>23</sup> Nolo's approach to public access incorporates simplifying legal procedure, making legal information readily available<sup>24</sup> and expanding existing

19. See discussion *infra* section II.

20. Examples of these suggestions include Suggestion 30 ("Remove the Rust from the IRS"), Suggestion 40 ("Create a National Idea Registry") and Suggestion 20 ("Punish Corporate Criminals"). LEGAL BREAKDOWN, *supra* note 11, at 67, 87 & 47. This book review will not examine this category of suggestions.

21. I include in this category Suggestion 17 ("Reform the Jury System"). Nolo criticizes the jury system for inefficiency, and mistreatment of jurors. Nolo concludes "jurors must make excruciating difficult decisions, but are given only garbled legalistic instructions and are strictly prohibited from taking an active part in trials." LEGAL BREAKDOWN, *supra* note 11, at 61. The other suggestions included in this category are more obvious, e.g., Suggestion 4 ("Simplify Legal Paperwork"), Suggestion 13 ("Provide Legal Help For the Poor") and Suggestion 19 ("Write Laws In Plain English"). LEGAL BREAKDOWN, *supra* note 11, at 15, 33 & 45.

22. See RALPH WARNER & TONI IHARA, THE PEOPLE'S GUIDE TO CALIFORNIA MARRIAGE & DIVORCE LAW 232 (4th ed. 1981).

23. A principle characteristic of Western legal systems is that legal institutions are administered by a corps of specially trained persons who engage in legal activities on a professional basis. HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 7-10 (1983). Although lay people do not necessarily have the ability to represent themselves in "less litigious" countries under civil law systems, these often provide more real access through the generous provision of legal aid representation in civil suits. MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS 172-73 (1985). In contrast, some non-Western systems such as Saudi-Arabian Islamic law, have very limited roles for counsel in civil cases and completely prohibit the use of attorney representation in criminal cases. Joseph L. Brand, *Aspects of Saudi Arabian Law and Practice*, B.C. INT'L & COMP. L. REV. 1, 11-12 (1986).

24. See, e.g., Suggestions 9 and 17 ("Educate the Public About the Law" and

self-help resources such as the small claims court.<sup>25</sup> Nolo focuses on access to the legal process as a goal in and of itself. Lawyers are generally blamed for closing off the legal system from those who need it. Eliminating the influence of lawyers is seen as a solution to many of the legal system's woes.

Nolo suggests that the civil proceedings that people are most likely to encounter should be removed from the courts.<sup>26</sup> They propose that such actions be resolved through mediation or simplified administrative resolution that would not require attorney representation. Unfortunately much of the book's analysis in this area is too simplistic. Although much reform is needed in areas such as family law and bankruptcy, the reform needs to recognize and address the complexity of the issues involved in the breakdown of our legal system.

One of the proceedings that *Legal Breakdown* recommends be removed from the court system is divorce actions.<sup>27</sup> Beginning with the unarguable premises that "divorce laws needs to be cleaner, less adversarial<sup>28</sup> and administered in a consistent and evenhanded way,"<sup>29</sup> Nolo concludes that "free publicly-funded mediation of disputes should be hallmarks of the new system."<sup>30</sup> Nolo further proposes that "the current system could be replaced by a simple administrative process of de-registering marriages."<sup>31</sup> Nolo's perspective is that it should be easier to end a marriage than it was to enter into it.

Nolo's proposal is unrealistic and objectionable for a number of reasons. The authors underestimate the powerful emotional significance of marriage in our society, apparently believing that marriage is nothing more than a formalized legal relationship. However, marriage is more than a licensed affiliation,

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"Computerize the Law"). LEGAL BREAKDOWN, *supra* note 11, at 25, 41.

25. LEGAL BREAKDOWN, *supra* note 11, at 53.

26. See, e.g., Suggestion 13 ("Simplify Bankruptcy"), Suggestion 16 ("Take Divorce Out of Court"), and Suggestion 38 ("Mediate Neighborhood Disputes"). LEGAL BREAKDOWN, *supra* note 11, at 37, 39 & 83.

27. LEGAL BREAKDOWN, *supra* note 11, at 39.

28. Not all of the adversarial quality of divorce can be attributed to lawyers. Divorcing couples may use the legal proceedings as a means of obtaining revenge against the estranged spouse. JANET R. JOHNSTON & LINDA CAMPBELL, IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT 90-91 (1988).

29. LEGAL BREAKDOWN, *supra* note 11, at 39.

30. LEGAL BREAKDOWN, *supra* note 11, at 40.

31. LEGAL BREAKDOWN, *supra* note 11, at 40.



it is seen as a "basic civil right . . . , fundamental to our very existence and survival."<sup>32</sup> Reducing the dissolution of a marriage to a matter settled by paperwork belittles the significance of marriage. Many people in our society passionately believe that marriage is an institution that allows relationships to ascend to a higher plane through making public the commitment that exists between the couple.<sup>33</sup> In a society that places so many psychological and religious connotations on marriage, it is unrealistic to suggest that wedlock be dismantled so mechanically.

As advocates for the underrepresented and persons with low incomes, the authors should qualify their support of mediation as the hallmark of dispute resolution in divorce. Professor Trina Grillo's article, examining the impact of divorce mediation on women, points out that voluntary mediation is an empowering process that "challenge(s) the hierarchical, professionalized way that family law is usually practiced."<sup>34</sup> However, Professor Grillo notes that the conventions of mediation that value prospectivity and formal equality can make it difficult for women to assert their rights or to achieve a fair income after marriage. She concludes that "equating fairness in mediation with formal equality results in, at most, a crabbed and distorted fairness on a microlevel; it considers only the mediation context itself."<sup>35</sup> Professor Grillo's analysis of the potential dangers of mediation states an important point that Nolo tends to ignore: the results that people get from the legal system are at least as important as ensuring unlimited access. In a manner similar to much of the criticism directed at the proliferation of attorneys, Nolo's analysis does not appreciate the role that lawyers play in achieving outcomes that serve the

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32. *Loving v. Virginia*, 388 U.S. 1, 12 (1967)

33. Another example of the significance of marriage in our society can be found in the fact that we restrict access to the institution. Lesbian and gay couples are denied the right to marry and experience anguish and anger at this exclusion. Despite the fact that marriage is valued as a civil right, federal courts have held that the government has a "compelling interest" in excluding gays and lesbians from marriage. SCOTT E. FRIEDMAN, *SEX LAW: A LEGAL SOURCEBOOK ON CRITICAL SEXUAL ISSUES FOR THE NON-LAWYER* 128-30 (1990). See also Ellen Simon, *Wedding Bell Blues for Lesbian Lawyer*, 18 *BARRISTER* 31 (Winter 1991-92).

34. Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 *YALE L.J.* 1545, 1581 (1991).

35. *Id.* at 1569.

needs of their clients or that advance the public interest. Easier access to divorce though mediation will not necessarily achieve a fairer society, if we emphasize process over substance.

For example, one problem that has accompanied the increase of divorce in the United States is a failure of our systems to provide the children of divorce with financial support. Nolo has very interesting ideas about how to reduce bureaucracy based on the principle that all children should receive at least a minimum level of support, regardless of their parents' income and that all parents should contribute to their children's support.<sup>36</sup> These are wonderful principles, but they seem less dependent on legal reform than on societal reform. Without a constitutional recognition of the right to a minimum level of support, such rights will have to come from legislation. Because there is no consensus that our society has a duty to provide for its children, Nolo's editors need to consider the effect that easier access to divorce will have on the children of failing marriages. Some of *Legal Breakdown's* critique of public access to the courts deals with more clear-cut issues. An important example is the book's observation that many courts fail to provide competent interpreters for parties who do not speak English. Nolo suggests that both civil and criminal courts should furnish competent interpreters who can show objective evidence of their qualifications. The principle that the parties to court proceedings are entitled to know what words are being uttered in their cases is central to the American judicial system. The failure of our system to make such participation available requires a solution, and there is no alternative other than making interpreters available.

Less importantly, but affecting more people, the book points out that our courts mistreat the average citizen who wants to contest traffic tickets and suggests that traffic courts need to treat people fairly and efficiently.<sup>37</sup> *Legal Breakdown* consistently advocates that courts should be user friendly and that court clerks should be trained to help and direct "everyone who seeks access to the courts, not just those with law

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36. LEGAL BREAKDOWN, *supra* note 11, at 76.

37. LEGAL BREAKDOWN, *supra* note 11, at 74. Personal experience has noted that in traffic court, cases that are represented by attorneys are routinely called to the head of the docket before people who appear without counsel. This procedure engenders considerable amounts of grumbling, by the underrepresented masses.

licenses."<sup>38</sup> Participants in the court system attach considerable importance to being treated with respect and dignity.<sup>39</sup> Perhaps one of the prime factors in the breakdown of the civil legal system has been the failure to remember such an obvious truth.

## II. SUGGESTIONS FOR REDUCING THE NUMBER OF LAWYERS AND ELIMINATING RULES THAT PROTECT LAWYERS' INTERESTS

*Legal Breakdown's* editors are outraged at the profusion of lawyers in our society. Like the Vice President, the book drops one-liners blaming lawyers for the litigation explosion in the United States and concludes that the United States suffers competitively with foreign countries because it has so many lawyers.<sup>40</sup> This uncritical condemnation of litigation is a bit surprising given *Nolo's* support of victim's rights and citizen's access to the courts.<sup>41</sup> As Alan Dershowitz has pointed out, in countries such as Japan, "victims of corporate and governmental negligence and malfeasance passively take it, rather than fighting back in court. That, for better or worse, is not the American way."<sup>42</sup>

People in the United States feel entitled to their day in court.<sup>43</sup> It is through individual litigation that United States citizens receive compensation for injury, because our society often does not provide care for its injured members. There is no collective ethic whereby wrongdoers feel compelled to ac-

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38. LEGAL BREAKDOWN, *supra* note 11, at 21.

39. Allan Lind et al., *In the Eye of the Beholder: Tort Litigants' Evaluations of their Experiences in the Civil Justice System*, 24 L. & SOC'Y REV. 953, 981 (1990).

40. "Japan produces engineers to 'make the pie bigger,' observed former Harvard University President Derek Bok, while America produces lawyers to divide the pie into smaller pieces. The more lawyers our society supports, the more litigious we become." LEGAL BREAKDOWN, *supra* note 11, at 85.

41. See, e.g., Suggestion 5 ("Make the Courthouse User Friendly"); Suggestion 35 ("Compensate Medical Malpractice Victims"). LEGAL BREAKDOWN, *supra* note 11, at 17, 69.

42. Alan M. Dershowitz, *Heroes and Hired Guns*, A.B.A. J., Oct. 1991, at 72, 73. Dershowitz concludes that "the current attack on lawyers is not neutral or value-free. It is a well orchestrated campaign being conducted by business interests that have the most to lose from increased litigation." *Id.* at 73.

43. A recent study found that tort litigants responded more favorable to adjudicatory proceedings such as trial and arbitration than they do to bilateral settlement procedures. The litigants felt that their cases received more dignified and careful consideration under the trial and arbitration proceedings. Lind, *supra* note 39.

cept responsibility for the injury they cause, rather victims must ask the courts to find responsibility, and back their finding with the state's coercive power.<sup>44</sup>

One reason why the American civil court system is more burdened today than in the past is that people must resort to civil lawsuits to fix a host of society's problems, because other institutions have been unresponsive.<sup>45</sup> *Legal Breakdown* too often reduces complex issues that are part of our society as a whole into problems about our legal system.<sup>46</sup> Much of the proliferation in litigation that Nolo frequently criticizes would be unnecessary if our society provided reasonable assistance for citizens who are sick, injured, or unable to work. At times, the authors unfairly blame lawyers for societal problems that lawyers, as much as any group, have tried to alleviate.

Another controversial aspect of *Legal Breakdown* is its message to the legal community concerning self-serving regulation of the provision of legal services. *Legal Breakdown* posits that lawyers have long perpetuated a guild system that wrongly appropriates the law, a resource that should belong to the public. A number of the book's recommendations presume that many of the problems in our legal system arise from rules and procedures that function only to protect the financial

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44. Another reason why other nations are less litigious than the United States may lie in differing cultural attitudes toward fault and responsibility. As an example, from an early age, Japanese people are taught that "appropriate expressions of responsibility and apology are the preferred response in many situations where Americans would normally opt for explanations or excuses." Daniel H. Foote, *Prosecutorial Discretion in Japan: A Response*, 5 UCLA PAC. BASIN L.J., 96, 99-100. Other commentators have noted that "[t]he availability of social restorative mechanisms like apology obviates formal legal sanction in many cases. In the United States, the relative absence of recognition of apology may be related to the observed tendency of American society to overwork formal legal processes and to rely too heavily on the adjudication of rights and liabilities by litigation." Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC'Y REV. 461, 464 (1986).

45. When the legislative process has been unresponsive to demands for change, lawsuits have been used to instigate institutional reform. Examples include the areas of civil rights (*Brown v. Board of Educ.*, 347 U.S. 483 (1954)), access to equal educational opportunities and (*Serrano v. Priest*, 557 P.2d 929 (1976)), and consumer safety (*Grimshaw v. Ford Motor*, 174 Cal. Rptr. 348 (Ct. App. 1981)). A further source of reform litigation is the legislative branch itself. Congress has chosen private litigation as an enforcement mechanism for carrying out congressional policies to implement social change. Title VIII, Fair Housing Act, 42 U.S.C. § 3601 et seq. (1968).

46. See discussion of divorce reform, *supra* at text accompanying notes 27-33.

interests of attorneys.<sup>47</sup> The authors contend that lawyers have monopolized the sale of legal information through laws that prohibit the unlicensed practice of law,<sup>48</sup> yet a license to practice law does not guarantee competence.<sup>49</sup> Nolo also asserts that lawyers dominate our state legislatures to such an extent that it is impossible for lawmakers to enact laws that will limit attorney income in a sufficient manner.<sup>50</sup> Furthermore, attorneys also influence legislatures to enact laws that can only be enforced by hiring lawyers.<sup>51</sup>

Criticisms of attorney competence and discipline are warranted. State Bars and the ABA struggle with these issues. Nolo notes some of the efforts that State Bars are making to strengthen attorney discipline.<sup>52</sup> Nolo also recognizes that some of the competence issues must be addressed through more practical legal education.<sup>53</sup> However, the need for competence in the provision of legal services is not obviously advanced by Nolo's suggestions to increase competition in the "law business" by allowing non-lawyers with less training and regulation than licensed attorneys to provide legal services to the public.<sup>54</sup> Unfortunately for attorneys, the extreme anti-lawyer perspective that *Legal Breakdown* presents may be closer to the view held by the public than is the Bar's vision of the profession. Somehow, lawyers must try to create a new narrative<sup>55</sup> for our profession, represented by the sympathetic

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47. See, e.g., Suggestion 31 ("Bring Competition to the Law Business"); Suggestion 39 ("Require Lawyer Impact Statements"). LEGAL BREAKDOWN, *supra* note 11.

48. LEGAL BREAKDOWN, *supra* note 11, at 69.

49. LEGAL BREAKDOWN, *supra* note 11, at 71.

50. An example is the inability of many states to enact "no-fault" injury compensation laws. LEGAL BREAKDOWN, *supra* note 11, at 7.

51. The authors criticize recent advancements in employment law, health law and high technology law because these developments have "produced work for many thousands of lawyers." LEGAL BREAKDOWN, *supra* note 11, at 85.

52. Illinois has opened disciplinary hearings to the public and California has established a full-time court to hear disciplinary complaints. LEGAL BREAKDOWN, *supra* note 11, at 82. California also now requires continuing legal education for all licensed attorneys.

53. LEGAL BREAKDOWN, *supra* note 11, at 72.

54. It is clear that there is a need for more access to competent legal advice and other services, and that people other than lawyers can provide such services. For a discussion of Citizen's Advice Bureaus that provide such services in England, See Marianne Wilder Young, Note, *The Need for Legal Aid Reform: A Comparison of English and American Legal Aid*, 24 CORNELL INT'L L.J. 379, 388 (1991).

55. See discussion *supra* note 13.

cally effective lawyer, working not just to promote the lawyer's business, but the good of the community as a whole. The writing of the new narrative will require more investment of attorney time and effort into pro bono representation, but will pay off in a restoration of respect for the profession. It is also important for attorneys to respond to the lawyer-bashing with a strong defense that articulates the functions that law and litigation serve in the United States. At the same time, it is necessary to examine the truths that underlie the harsh criticisms of lawyers found in *Legal Breakdown*. It should be hoped that *Legal Breakdown* will stimulate discussion among attorneys and generate more ideas about how the legal profession can help improve public access to the law. After all, attorneys are in the best position to shape the law to better serve the needs of the public.

