



Thursday, Sept. 17, 2020

Access to Justice and the Role that Law Schools Play

Co-Sponsored by: Baylor Public Interest Legal Society

Access to justice is fundamental to the rule of the law – the notion that every person can appeal to the court system to peacefully resolve disputes. Yet access to justice is elusive for many Americans. Few are able to meaningfully access the courts. The implications of this issue threaten our democracy.

This discussion includes the challenges that our society and the legal profession face regarding the lack of access to the courts. Also included is advice to law school faculty and staff regarding best practices for preparing law students to address access to justice issues.

Chief Justice Nathan L. Hecht
Supreme Court of Texas

Interviewed by:
George T. "Buck" Lewis
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Stephen Rispoli: If you look at history, you'll see that access to justice is one of the things that our founders valued. You will see that our founders of our nation or framers of our constitution emphasized that their number one value is justice. Thomas Jefferson said that the most sacred duties of government is to equal justice and to do equal and impartial justice to all its citizens.

Alexander Hamilton wrote, "The first duty of society is justice." James Madison in Federalist 51 wrote, "Justice is the end of government, is the end [00:00:30] of civil society. Never has been, never will be pursued until it's obtained or until liberty be lost in the pursuit." George Washington said that the due administration of justice is the first pillar of good government.

Now, these founding fathers all had their faults, even significant ones, but I believe that what they said was right. However, as lawyers, we must examine whether or not our justice system is living up to the lofty goal stated but not finished by our founding fathers.

Unfortunately, among the significant [00:01:00] findings of the ABA's 2016 report on the future of legal services in the United States is a reality that many Americans do not have access to civil suit legal services. The report found that approximately 100 million low and middle income Americans cannot afford legal representation for basic human needs like shelter, sustenance, safety, employment, and many other basic everyday needs.

And of these 100 million Americans, an estimated 30 to 40 million litigants do access the civil justice system [00:01:30] and are involved in over 19 million civil cases each year in state trial courts in Texas alone. And I mentioned Texas only because Chief Justice Hecht is on this panel and can speak to these issues. Although I recognize this as a nationwide concern. Nearly 5.8 million people qualify for legal aid. Out of all those who qualify, only 100,000 Texas families are assisted by legal aid organization.

But the first line of the constitution reads, "We, the people of the United States, in order to form a more perfect [00:02:00] union, establish justice." The framers mentioned establishing justice before they talked about providing for common defense or ensuring domestic tranquility. And I don't believe that their ordering was an accident, they recognize that an accessible, well-functioning system of justice is essential to societal stability. It's about the rule of law.

Unfortunately, we've been struggling with access to justice issues for decades. In 1951, Judge Learned Hand, when speaking to Legal Aid Society in New York said, "If we are to keep [00:02:30] our democracy, there must be one commandment: Thou shall not ration justice." This is about who we are as a country and who we hold ourselves out to be. So, I could not ask for two better people to talk about access to justice and the challenges that face our country, including the issues raised by the COVID-19 pandemic than Texas Supreme Court Justice, Nathan Hecht, and Buck Lewis.

Chief Justice Hecht is the 27th chief justice of the Supreme Court of Texas. [00:03:00] He's been elected to the courts six times, starting in 1988 and is the longest serving member of the court in Texas history and the longest tenured Texas judge in active service. And you can read more about him on our website and elsewhere, but I want to touch on some things that are not in his bio.

He cares deeply about access to justice. Some people believe that access to justice is a partisan issue, Chief Justice Hecht I don't believe does, and I don't either. And he [00:03:30] helps people see that access to justice for what it really is. Living up to the high ideals outlined in the constitution and our responsibility as lawyers and professionals in the justice system.

In Texas, he's constantly working on access to justice issues. He's created countless commissions and work groups to fix issues. He's been active in legislative sessions, advocating for veterans and for legal aid funding. On a national level, he travels to Washington, at least when we could, to advocate for funding for the Legal Services Corporation. When funding [00:04:00] was zeroed out in the previous congressional budgets, Chief Justice Hecht was there. He was fighting for legal aid and the millions of Americans that depend on it. I'm so honored that he can join us for this conversation.

I also want to introduce you to George Buck Lewis. He's a shareholder of Baker Donelson in Tennessee, and he's an expert in his field. He's been named the Class Action Lawyer of the Year and Appellate Lawyer of the Year. He served as a president of the Tennessee Bar Association, excuse me, and the Memphis Bar Association. [00:04:30] He served as a chair of the ABA Pro Bono and Public Service Committee and the chair of the Tennessee Supreme Court Access to Justice Commission.

His service doesn't end there. He was instrumental in creating Tennessee's Free Legal Answers website, which served as a model that was rolled out nationwide to all the states, including Texas. He continues to work on pro bono and access to justice issues and teaches leadership development at the University of Tennessee, Knoxville, College of Law along with Dean Doug Blaze. I'm looking forward to hearing [00:05:00] their thoughts about challenges, how the current pandemic has affected access to justice issues, both positively and negatively, and what they think law schools can do for access to justice. So with that, chief, Buck, welcome and I'm turning it over to you.

Buck Lewis:

Thank you, Dean. It's an honor and privilege to talk with Justice Hecht and also to be part of this conference. Tennessee did one of these conferences a few years ago, and I know a little bit about the amount of work that it takes [00:05:30] to put on a successful conference and what a lineup that you have.

So, your honor, I found a quote from you on the Legal Services Corporation website. Don't worry, it's a good quote. And it says, "Justice for only those who can afford it is neither justice for all nor justice at all." When we talk about [00:06:00] justice for all and the justice gap, why is it so important that that be a part of a leadership conference at a law school?

Justice Nathan Hecht: It's an issue that is not often understood, not often known. A lot of times when I'm talking to people about access to justice, [00:06:30] their immediate view is, "Well, this is a lawyer problem. I get that, but I'm a physician, I'm a business person, this is not my issue. You need to go talk to the lawyers. They need to take care of this."

And it really takes leadership to go out and tell about what the issues are, about how they affect life in our country and our state [00:07:00] in ways that persuade people, engage them in trying to address the issue. So, over the years, it has lacked leadership. And that's why a few of the leaders, my predecessor, Chief Justice Jack Pope years ago really stood out because they took the message out beyond the legal profession and tried to [00:07:30] make it real for other people as well.

Buck Lewis: What is the role of the law school and the judiciary on trying to close what we've called the justice gap?

Justice Nathan Hecht: It's complex. Sandra Day O'Connor has persuaded us, I think, that much of the [00:08:00] inability of people to engage in voting and other participation in our government and our democracy comes from a misunderstanding, a lack of understanding of the history of our democratic institutions, about what they do, a lack of civics education.

So, she started telling us [00:08:30] all what we kind of knew in the back of our minds was there was really a crisis in not understanding civics education. And it's not political at all. It's good government. It's just that people should have an understanding of what it means to participate in our government.

[00:09:00] Well, access to justice is the same thing for the legal profession. When students get to law school, they don't really know what to expect. I certainly didn't. My first class was civil procedure and it lasted an hour and 15 minutes. It was an hour and 15 minutes of hell. We were all grilled by the professor and I thought, "Oh my goodness, what have I gotten myself into?"

But as you go through [00:09:30] law school, you begin to get a better appreciation for what the profession is, what it does, how it operates, your role in it, those kinds of things. And access to justice is a component of that. Most law students, I'd say virtually all of them, are like my business friends. They have no idea what you're talking about. When you talk about access to justice, they don't have a clue.

Now, they don't understand what Dean Rispoli [00:10:00] just, the figures that he just laid out, have no idea that that's out there, have no idea what legal aid lawyers do. One governor, not of Texas, told me one time that he

understood legal aid providers were just kind of a welfare system for lawyers who couldn't get a job. And it's that lack of [00:10:30] understanding of appreciation really is in the profession until law schools and others remind us, "These are the issues. This is how you address them," and begin to get lawyers used to the idea that this is not a problem over there, that this is something I need to worry about. And [00:11:00] not just myself, but as a member of the profession.

So, when we ask law students to represent people pro bono, that's almost always a really eye-opening experience. "Oh, wow. This is really rewarding. I see this needs to happen." And so, that's really where it starts, [00:11:30] Buck, is, I think, in the law schools. And frankly, we didn't focus on that until pretty recently and try to get to the law schools and say, "Hey, you need to be talking to the students about this because they're going to get out here one of these days and this is going to be around them and it's going to be a pressing issue and they need to know what we're talking about."

So, I really think the groundwork [00:12:00] is laid in the law schools. What does it mean to be a lawyer? Well, this is a piece of it. Trying to make sure that there's access. And then you asked about the digital divide. That's a component of it because we've seen in the pandemic, the courts are now using remote conferencing. So, Texas Courts in the last six months [00:12:30] have had close to half a million hearings by remote technology.

And I'll bet you that almost every judge in the state was like me on March the 1st. They never heard of Zoom. They thought Zoom meant to hurry. They'd never used it, they'd never had any idea. And if you said, "Hey, I got a great idea. You should use Zoom." They'd look at you like you were crazy. We don't like computers, we're lawyers. [00:13:00] But now we're having to do it.

Only problem is, lots of people do not have access to the technology to be able to participate. They don't have the computer. Most people didn't have iPhones or some kind of phone but they don't always have a broadband, they have limited plans. Sometimes they don't have Wi-Fi, and so it just makes them harder to get to a place where there is help, [00:13:30] a legal aid office, a courthouse, remotely because they don't have the technology to do it.

Buck Lewis:

Something you said particularly resonated with me. A moment ago, you said, "Most law students don't have much of an idea about what being a lawyer is all about." And one thing I've noticed, you know, I'm a part-time teacher. And one thing [00:14:00] I've noticed over the last nine years of doing that is that very few law students and many lawyers have not been

taught anything about the preamble to the rules of professional conduct, the model rule, and pretty much the same rule in Texas and Tennessee, and most everywhere else.

And the very first sentence of the very first session of the preamble says, "A lawyer, as a member of the legal profession, [00:14:30] is a representative clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." And then look at Section Six, it's a long section, so I won't read it all. But the first sentence of Section Six says, "As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."

It goes [00:15:00] on to talk about how the fact that every lawyer, every single lawyer, not old, not young, not tax, not corporate, not litigate, everybody's got a responsibility. And because these are aspirational ideas enshrined in our preamble, I think it's often missing maybe from our ethics curriculum in law schools, should this be something that law schools focus on more, not just on [00:15:30] what gets your discipline, but also what you're supposed to do once you become a lawyer?

Justice Nathan Hecht: Oh, I think so. I think you're just exactly right. I'm not sure what the problem is, but part of it seems to be that we just kind of assume that students know what you say, what you just now shared. What does it mean to be a lawyer? And they really don't have any idea. And so, they're [00:16:00] taking contracts or something. They say, "Well, my job is to get as high grade as I can in this class." But the idea that you've got some responsibility as a steward, as a steward of the justice system, you're partly responsible for its interplay with the public.

Well, stewards have special responsibility. They're supposed to look after how the system operates but [00:16:30] they don't know if you don't tell them. And so I think that really has to begin in the law school. And if it doesn't, then when they get out into practice and it's all new to them, it's going to be even more foreign to them than if they had been studying it the whole time. I totally agree with you.

Buck Lewis: You brought up Zoom, so [00:17:00] maybe that's a good segue to talking about more generally the role of technology in closing the justice gap. I was in a conference earlier this morning with the Litigation Counsel of America people and you were quoted again in that conference by some judges on that panel that Zoom was [00:17:30] here to stay and the profession of the law and court systems has been changed forever. Did they quote you pretty close to accurately about that?

Justice Nathan Hecht: That's what I think. That's what I said. Yeah. I mean, we know this and we kid ourselves about it. We don't like technology, lawyers and judges, we like tradition. We like doing it the way it's always been done. That's why we got [00:18:00] form books. If it worked yesterday, there's no reason to change it. And if you think about it, our world has changed just in our lifetimes, Buck. I mean, it's changed profoundly.

I grew up when televisions were a new thing and now just in the last few years, we've got social media and people [00:18:30] have expectations as a result of that. They think that if you want to buy a sport coat, you can get on Amazon and they'll bring it to your door. And the idea that you got to drive across town and go to a clothing store, maybe that's what you want to do, but you don't have to do it anymore. People order lots of stuff on social media.

But the [00:19:00] law practice has stayed exactly the same. It's just exactly the way it was 40 years ago when I started as a trial judge. You haul everybody down on the courthouse, you make them sit out there in the gallery. You make them wait for hours till their turn comes to talk. It cost people money if lawyers get used to it, but other non-lawyers who have jobs, they don't go to the [00:19:30] courthouse. They got to think about, "How do I get there? Where do I park? How long is this going to take?" And not have a clue about any of that. It just makes no sense. You'd think, "Oh, no, no, we can't operate this way."

If you operate at a grocery store like that, people would, they wouldn't come. And yet here we are operating the court system that way. And now, all of a sudden, we're saying, "Oh no, [00:20:00] all you have to do is wait till the appointed hour, turn on your computer screen, punch a button, you, and the other side, and the judge will be there in a couple of minutes. You take care of your business, you turn the computer off and go back to work.

It's not for everything. I think it's going to be very difficult to do jury [00:20:30] trials. You're more of an expert at that, Buck, but it's going to be very difficult to have jury trials with much remoteness involved. But people are thinking about it. People are saying, "The day of the routine civil jury trial in-person at the courthouse may be coming to an end. It may be the car wreck cases, [00:21:00] simple contract disputes, lots of stuff can be tried acceptably fairly. You don't have to think about it. And certainly lots of other proceedings. So, yeah, I think remote conferencing video platforms have changed everything and we'll never go back.

Buck Lewis: Well, it might be gratifying to you to learn that the conference I attended [00:21:30] earlier today was entitled Trial by Zoom. And it was, can we let witnesses wear masks or we need to be able to see their whole face? What about the jurors? Do we distinguish between witnesses? Do we need

parties to consent? What about on the criminal side, all these constitutional and procedural issues. But I think you're right, courts are starting to realize that even after a lot of time [00:22:00] has expired, even after a vaccine, the vaccine might be 65% or 70% effective, there may be good reasons not to have these trials in person.

In my home state of Tennessee, last year before the pandemic, there was a discussion of holding hearings by phone and that our court would particularly encourage the trial judges when the lawyer was working pro bono. So, let them attend by phone. So if they were an hour away from the courthouse, [00:22:30] they didn't have to spend another two hours without compensation.

And I think that discussion is going to keep going, except it's going to be video now. Do you see a day when state courts begin to help out pro bono lawyers by allowing them to attend remotely, giving them the option of using technology so that that pro bono commitment is as efficient [00:23:00] as possible?

Justice Nathan Hecht: Yeah, I think it's common. I'll give you an example. Last winter, January, February a friend of mine here in Texas who's very active in promoting access to justice called me with an idea. And he said, "Why is it that we have to prove up uncontested divorces in person, [00:23:30] in the courtroom? Why can't we do that, back then, by telephone. Just call a judge to have him take the party through the prove up and be done with it." He said, "I can't fathom why we can't do that. It looks to me like that would be the easiest thing in the world."

Well, we don't get anywhere and people say, "Oh, sure. We need to think about that," but nothing really happens. And then, boom, here comes a pandemic and now [00:24:00] people are thinking about not just that, but, "How much other stuff can we do?"

And it seems to me that it's just an idea that, not exactly whose time has come, it's just been forced on us that we've got to make it easier for particularly pro bono lawyers but even legal aid lawyers too to represent their clients. And [00:24:30] I know the legal aid providers here in Texas are working on ways to bridge the digital divide by setting up places where their clients can go. And maybe it'll be a part of the legal aid office, or maybe it'll be a separate place, maybe in a community center or someplace that's convenient. But it has the technology tools that you need [00:25:00] to participate freely either with your lawyer, with the judge too.

And the more you can make this easier, the more clients you can serve and the further we'll be along toward really providing access to justice for all.

Buck Lewis:

Well, speaking of technology, and speaking of the pandemic, the American Bar launched [00:25:30] a little over three years ago an online website called Free Legal Answers in which the clients can log on and leave questions if they're qualified by income and asset, and then lawyers can go on and answer those questions.

And in the materials for the conference for our session is a video and a PowerPoint, some materials about Free Legal answers. So, I would encourage those [00:26:00] students, faculty and practitioners who are not familiar with Free Legal Answers to take a look at those. Free Legal Answers is now in 42 states, just launched in New Jersey and California as a result of the pandemic, because of course that is a vehicle where clients and lawyers can communicate with each other, even though they're not paying attention to the subject [00:26:30] at the same time, so it's asynchronous. And even though they need to be doing it in their living room or in their study or in their dining room. And we've seen a 50% increase in the use of Free Legal answers since the pandemic.

As chief justice in Texas, you've been a loyal supporter of Free Legal Answers. And in fact, I think when Harvey hit that [00:27:00] Houston area in South, your court entered an order allowing not only Texas lawyers to answer questions on Free Legal Answers, but to allow any lawyer licensed in any state to go online and answer disaster-related questions on Texas Free Legal Answers.

Could you just talk a little bit about your view of that tool [00:27:30] and your experience with the hurricane and the disaster order and having lawyers come in from other states, not just online, but in person as well to help out the citizens of Texas when it was really hard for lawyers and clients to hook up?

Justice Nathan Hecht: Yeah. I think the first time we did it to any extent was back in 2011 when the hurricane hit. And there were, we [00:28:00] got offers from Louisiana lawyers that said, some of them said, "We may have to leave because this hit New Orleans pretty hard and we're thinking about replanting to Texas."

But then we had other lawyers who said, "Well, my practice has got to be hit pretty hard over here in Louisiana, but I could come over there and help in Texas, but you can't practice [00:28:30] law in another state without some kind of permission." So, Supreme Court contacted the State Bar and said, "What about this? What about the court giving them special dispensation and letting them practice over here? What do you think the Texas lawyers would think about that?"

And they got right back and said, "We think we need to help. And we think Texas [00:29:00] lawyers won't see it as a threat that people are coming in and taking their business." These people that needed representation most of them far and wide didn't have any way to pay for it. So, this is not taking business away from Texas lawyers. This is really helping them.

And then after, after we did it and it worked. This is always important. We're talking about the leadership and the [00:29:30] law schools. It's always important to circle back and say, "What a great job you did. Look at what you did. You plowed new ground. You let these lawyers come in from another state and see there. You can really be proud of it. We're going to brag to the whole public that you really helped in this campaign. The bar was there, the lawyers they were helping. Oh, well, that's pretty good. So then when Harvey [00:30:00] hit, we had the same situation with one change.

In 2011, you wanted to help somebody out in Texas, you had to fly over here, drive over here because the technology to represent people remotely just wasn't in place. I mean, people weren't using it. It hadn't been adaptive. Now [00:30:30] it is. So, the morning Harvey hit, that breakfast time, I got a call from the Chief Judge of New York, Janet DiFiore and she said, "Nathan, I'm so sorry seeing what you all are going through. I want you to know that the New York Bar wants to help you every way they can."

And she said, "I've already been on the phone with the president of the New York [00:31:00] State Bar and they're going to show lawyers how to do this from their desktops in Manhattan so they don't have to fly to Houston and Galveston and Corpus Christi. They can just do it there and get legal aid providers to help fix them up with clients that they need and work perfectly."

She was the first to call me and then your chief justice, Jeff Bivins was the second one to called me. He says, "Tennessee lawyers want to do the same thing." So we did exactly [00:31:30] the same thing. We issued an order letting out-of-state lawyers practice in Texas because in cases or matters relating to Harvey it wasn't just they could do anything they wanted to, it had to relate to the storm, but it was really a godsend. It helped a lot.

But with new wrinkle was that they didn't have to [00:32:00] pull a job, and come to Houston, and find a motel room and someplace to stay for two weeks and leave their families at home. They could really do it over the internet and it was a big help. And it was great. It builds the profession, lawyers can feel good about it, the public feels good about it. It was great.

Buck Lewis:

Well, the ABA Pro Bono Committee [00:32:30] is grateful to you for your leadership in this regard and to New York and Tennessee and these other states that were early adopters. And you might be interested to know that we launched in 44 counties in California last week. And a lot of that was driven because of the wildfires.

And so, we tend a lot of times to think about disaster as hurricanes and tornadoes, but we've had an earthquake up in Alaska, we've got wildfires in the West. And so, [00:33:00] we're very grateful for your support of that technology. And I see more technology coming. I see some of the work that's being done at Stanford, and Baylor, and at Suffolk Law School is taking this data that we're gathering through this online representation and [00:33:30] we're learning more about where is it that the problems are occurring, and what types of problems are happening, at what time of year, and what time of the week and that sort of thing.

And so, I see that as data analytics, not so much artificial intelligence yet, but certainly data analytics helping us be smarter about how we deploy resources. Do you see that in Texas yet?

Justice Nathan Hecht: We're starting to, [00:34:00] but this is really pretty new for us. And if it hadn't been for this pandemic, I think if you and I were having this conversation last February, the kinds of things you're describing are kind of pie in the sky, sort of. "One of these days we'll get to it, wouldn't it be nice if we could really make some progress in that regard? But meanwhile, [00:34:30] this is the way it is."

And now all of a sudden, having been appended the way we've been, we're starting to think, "Well, if you could do this, why can't you do some of that?" And it really is going to, as far as the law schools are concerned, it just opens a new vista. We've already got an ABA Canon that says lawyers [00:35:00] have to be tech savvy. They have to be able to advise their clients on technology. So they have to know it themselves.

So, that's something that the law schools need to teach is what do you need to know about technology that you need to be able to tell your client to be competent? But now we got a whole new set of problems, challenges, I guess I'm supposed to say. How [00:35:30] do you take a video deposition remotely? How do you make oral argument in a state supreme court or court of appeals on Zoom? Where do you put the papers? Where do you look? How do you set the camera? What happens if something happens? How much training do you need?

And then is persuasion different in a remote setting than [00:36:00] it is when you're standing in the well of the court? And for trial lawyers, when you're talking to the judge, what about interruptions? How do you know

when it's your turn? How do you manage the mechanics of persuading when you're doing all of this remotely.

So, there are going to be a lot of skills that develop as a result of that. You already see it [00:36:30] in bar associations, people who are offering CLEs and all kinds of training. This is how you do it. This is what's most effective. And there's just going to be more of that. So, I think the use of technology in its variations is really going to change a lot of stuff.

Buck Lewis: Yeah, well, and some of our local bars are experimenting with [00:37:00] Zoom mediation pro bono, where the mediator is serving pro bono. And that has the advantage of being able to tap into more volunteers because they don't have to be down at the courthouse to do their pro bono mediations.

Justice Nathan Hecht: Right.

Buck Lewis: So, I think that's going to be another thing that we see a lot of. Let me change the subject just a little bit. And we can come back to [00:37:30] some of this if time permits. I don't want our time to elapse without asking you about attorney wellbeing. My students are as worried, and tired, and stressed out, and fatigued as I've ever seen them. And of course I'm not even getting to know them in person like I usually would. Does this discussion of pro bono, and law schools [00:38:00] amongst the lawyers have a role to play in this whole issue of attorney wellbeing?

Justice Nathan Hecht: I think it does, Buck. Wellbeing is a complex subject too, basically the practice of law is stressful. And it's supposed to be in some respects. So, it's not going to go away. But [00:38:30] lawyers need to be able to know how to cope with the stress, how to manage it. And so, that's what they've got to learn and experience through these difficult situations.

But part of young lawyers, my law clerks, they go out into practice and so then we get together again and I say, "How's it going?" And almost always they say, " [00:39:00] Great." And then secondly they say, " You know, I do a lot of routine stuff." So I don't ask them how many times have you been to the courthouse or how many cases have you tried or how many hearings have you conducted? Because it ends up making them feel bad that they're not getting more of those experiences.

But with pro bono cases, you get that in almost every case. And it puts the lawyer [00:39:30] in with a real client, with a real life. And it shows you again what the practice law is about, what it means to be a lawyer. And then you begin to separate in your mind, because this is part of wellbeing that you don't want to... I'm not suggesting you get schizophrenia, but you have to separate out the different [00:40:00] pieces that are impacting you

so you don't let one take over. And it kind of helps them put into perspective some bad experience they're having in the practice of law with having this good experience.

We always have a big promotion at the legislature during the session on access to justice. [00:40:30] And I was over there one time and we had this lady who had sought out help because of domestic violence, terrible tragedy. And she got good help. And she was in a very bad situation. And as she was finishing her presentation in front of all these legislators and news media and people, she turned over to me and she said, "I want you to go tell your colleagues on [00:41:00] the Supreme Court that they saved my life."

And she looked at me just like she was signing the declaration of independence. And it was just a very solemn moment for, and there was hardly a dry eye in the place because people could see, this is where the money is going. When we're talking about access to justice, we're talking about her and people like her.

Buck Lewis: [00:41:30] There was an article seven days ago in the ABA Journal about the eviction crisis that's coming. And one of the quotes in there is that, "We could see a rate of eviction 10 times what we've ever seen before." And so, that's a lot of hurt. What are the kinds of things that we haven't talked about yet that law schools can do [00:42:00] in order to have to address the coming eviction crisis, the problems that veterans have, which Baylor has addressed?

The need is just skyrocketing and it's probably going to keep skyrocketing at least through the early part of the next year. And what do you see in Texas or around the country that law schools can do to help meet that need right now?

Justice Nathan Hecht: [00:42:30] Yeah. I think one of the most important things is the clinical experience in those areas. Eviction in most states and in Texas is a pretty detailed process and it's different from just general civil litigation. There are specific little timetables, things have to be done in particular ways [00:43:00] and different things happen if you miss a deadline.

And that's not something that you spend much time studying in most law schools. So, it's not hard to learn, but it's just something that you need to be acquainted with before you get out. Then another thing, and maybe this doesn't warn a class on the subject, [00:43:30] but eviction is a very complex social issue because renting property is a business and the tenants are the landlord's clients. And ordinarily you want to do everything you can to satisfy your clients so that they'll keep coming back or in a case of a rental that they'll stay.

But it's unusual in that a lot of times tenants can't, and in markets [00:44:00] where there are lots of tenants, the landlord is incentivized to get somebody new in there. And other places there's more incentive to work with people. But that complexity is not well understood.

I see a lot of lawyers who just have the perspective, "Oh, the poor tenant." Well, that's true. I mean, there's no gainsaying that. Tenants that are [00:44:30] losing their residences in this pandemic are in very difficult straits. But it impacts landlords too. And I think if law school is trained in that, they'll offer to clinic and how to help people through evictions. All the legal aid lawyers I know that tell me about their eviction operations, they [00:45:00] hardly ever say, "We laid out all the tracks and try to make sure the guy's not kicked out." They say, "We're looking for some way to win here. We're looking for some way to get some time, to get a different Range Mug, something we can do so it's not just war all the time.

And law schools could help students understand that. But if they don't, if the law school doesn't, [00:45:30] it's going to be very hard to get that kind of training or understanding.

Buck Lewis:

I get a comment from law students and young lawyers that I want to address to you. And that is especially third year law students will say, "Well, I love doing pro bono, but I know when I join my firm or my legal department, there are going to be all these demands on my time. I'll have a billable hour requirement. I may have a marketing requirement. I may have something [00:46:00] so I may be doing Habitat for Humanity or Red Cross because that's the charity that the general counsel's most concerned with."

And one of the things I tell young lawyers is that there's a business case to be made for pro bono. Two of my very best clients I would never have it wasn't for the relationships that I formed through pro bono work. What do you say to students and very young lawyers who say they want [00:46:30] to do pro bono but they're just concerned about how do they juggle all these competing demands for their time?

Justice Nathan Hecht: Yeah. And it's tough. And I know that. The billing requirements for big firms, hour billings can be pretty tough on young lawyers. But a lot of times, most recently, a lot of law firms have been very [00:47:00] responsible about encouraging their lawyers to take pro bono cases. One of my former clerks was at a firm in Washington for a couple of years and she asked to take a case and they said, "Sure." And cut her a little slack on her time so that she could do it.

But law firms these days, a lot of the bigger firms, are trying to make it a marketing [00:47:30] push that, "We let our young lawyers do this. You

should come work for us because we encourage this." A lot of law firms even have pro bono coordinators, which is a pretty new thing just in the last five or six years that are on staff. And that's their job to gather up the cases that, from whatever source, and get them to the lawyers [00:48:00] inside the firm. Because that that's always one of the problems.

A lot of lawyers will say, "Well, I'll take a case, but I don't know where to get it. I don't want to look for it and I don't want this kind of case. I'll take an eviction case, but I don't want a divorce," or the opposite. And so, the coordinator can go and get those cases and make sure they get distributed. But [00:48:30] to be successful as a lawyer, you got to have the courage to stake out positions and stick by them.

And when one of them is the betterment of the profession, young lawyers just need to be encouraged to, you should do this. You can do it.

Buck Lewis: Well, I think it is important for law firms [00:49:00] and legal departments to have pro bono plans that give some form of credit to the lawyers that do it. It sends a message to everybody that it's an important cultural value if they can give billable hour credit or some other kind of credit, then all the better. But what I tell young lawyers is, if you don't do pro bono, you're giving up the relationships that you make, you're giving up [00:49:30] the fact that it feeds your soul, you're giving up the fact that it makes your resume look a whole lot more robust. And it's a way that through the Young Lawyers Division of almost all bars, you can get to know people and be lifelong friends and you're really missing out.

All right. I think the dean we're at 3:50. I could go another two hours, I think, pretty easily talking with you. But I think the dean wanted us to take some questions. Did [00:50:00] you want us to do that, Stephen, also?

Stephen Rispoli: Please do. I have uploaded them to the chat or I can just ask you both now. I'll tell you what, I'll just ask.

Buck Lewis: I see one that says, we were talking about technology and one of the access to justice initiatives that I know you've mentioned to me before, your honor, is the Utah ODR project that's going on, Online Dispute Resolution. I think you mentioned that to me before.

Justice Nathan Hecht: [00:50:30] Tell me again.

Buck Lewis: I think there's a pilot project for online mediation, Online Dispute Resolution in Utah.

Justice Nathan Hecht: Yes. Right. They borrowed it from the British Columbia. They really developed it up there. And then Utah has put it together and they rolled it

out. So it's a very simple way to get online, [00:51:00] say, this is my complaint about so and so. And then there's a process for service where that person is formally served so there's no question about due process.

And then they can go back and forth. They can ask a facilitator to join them or not. And then in the end, there'll be a judgment for one side or the other just like [00:51:30] you went to court. But there's no cost to it. I mean, I think there's a \$5 startup fee or something, but it's pretty inexpensive.

And so, that Online Dispute Resolution, ODR, we've been looking at it in Texas. We've had a pilot project up in North Texas that hadn't gotten very far, but we're still looking at it. But now events have overtaken us. And with the increased use [00:52:00] of remote technology, I think that's going to really give ODR a boost. And again, it's just another way of reducing the hurdles, the cost and time hurdles of trying to get dispute resolved in the courthouse.

Buck Lewis:

Well, and I think it fits with this coming eviction crisis because a lot of times the landlord [00:52:30] just wants their property back and the tenant wants to move, they just need a little time to do it. And you can reach these sort-of non-monetary solutions. And if people can do it remotely through an ODR program or a Zoom mediation program, everybody wins. And it's really also something that relatively young lawyers can be good at. Because young lawyers often are sit down to [00:53:00] the courts that handle these eviction matters and do that.

And I want to stress to our young lawyers and law students how this can really be a great passion for you in your profession. I was looking at John Grisham quotes earlier today and one of my favorite ones is he says, one of his characters in *The Rainmaker* says, "Don't compromise yourself, you're all you have." And if you can marry your [00:53:30] passion with your work, then that's a wonderful way to live your professional life.

The other question is from... I see a question here, "Are there any initiatives in Texas that could serve or could serve as a model for Texas to make probate court more accessible or affordable?"

Justice Nathan Hecht: We've worked on forms. We've just finished them and we would have approved them but [00:54:00] for the pandemic. So they're sitting over on the shelf, but we're about to roll them out. But the probate bar was very helpful and the probate judges in getting very simple, just fill this out kind of stuff, take them through it because, again, a lot of what happens in probate court is pretty formal and it lends itself to that.

Now, of course, there are other cases that don't, but [00:54:30] that's a project that the bar was anxious to help with because they feel like it benefits them in their practice and their business for people to have more access to the probate court. So, they were not reluctant at all to help us with that. So, that's one way to do it.

Buck Lewis: Well, Chief Justice Hecht, thank you so much for [00:55:00] being with us-

Justice Nathan Hecht: My pleasure.

Buck Lewis: ... for your lifetime of public service, for your support of the ABA Pro Bono Committee and all things related to access to justice. You're a tremendous resource, not just for the State of Texas, but for our entire country. And I know the organizers of the conference are as grateful as I am that you would spend this time with us today.

Justice Nathan Hecht: Thanks, Buck.

Leah Teague: Speaking as one of the organizers, thank you again so much. And I wanted just to jump in to say [00:55:30] thank you, Stephen, for that beautiful introduction to lay the foundation for this conversation. And to you, Chief Justice Hecht, there is not a conversation about access to justice that you are not praised and admired for your work. So again, we thank you. We are so proud to have you in Texas leading on a national level. And Buck, always so good to see you. Thank you for your work on a national level in terms of pro bono activities.

Buck Lewis: Great to be with you.