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Foreword

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COLLOQUIUM

**THE JUDICIAL ROLE IN PROFESSIONAL
REGULATION**

FOREWORD

*Bruce A. Green**

INTRODUCTION

In his confirmation hearings, Chief Justice Roberts analogized judges to baseball umpires who only call balls and strikes.¹ That is a questionable analogy in general, given that judges' oversight of court proceedings goes beyond applying the law. But most especially, it is belied by judges' role in regulating law practice, including judicial practice. With respect to lawyers, judges not only apply the law but make and enforce it. The eleven pieces in this collection, briefly introduced here, reflect the breadth of courts' authority.²

I. UNAUTHORIZED PRACTICE OF LAW

Courts' power starts with the authority to determine what work may be done exclusively by a lawyer. This power is exercised through the interpretation and enforcement of unauthorized practice of law (UPL) rules and statutes. By interpreting "the practice of law" broadly, courts give lawyers a legal monopoly not only to advocate in court but to give legal advice and draft legal documents. State judiciaries can make exceptions by "authorizing" nonlawyers to perform work that constitutes "the practice of law." Consequently, state judiciaries have it in their power to let nonlawyers assist low- and middle-income people who cannot afford a lawyer's help with their legal problems.³ Some laws and administrative regulations make small

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1. See Bruce A. Green & Rebecca Roiphe, *Regulating Discourtesy on the Bench: A Study in the Evolution of Judicial Independence*, 64 N.Y.U. ANN. SURV. AM. L. 497, 551 (2009) (quoting Chief Justice Roberts at his confirmation hearings).

2. The Stein Center's collaboration with the *Fordham Law Review* now dates back more than a quarter century. See Bruce A. Green, *Deborah L. Rhode's Access to Justice*, 73 FORDHAM L. REV. 841, 848 n.61 (2004) (listing books produced in the first decade of this collaboration).

3. Some state judiciaries are currently experimenting with reforms to liberalize UPL restrictions to enable nonlawyers to provide broader help with legal problems. See Arthur J. Lachman & Jan L. Jacobowitz, *Arizona and Utah Jumpstart Legal Regulatory Reform*, LAW

inroads into the lawyer's monopoly by allowing nonlawyers to help with others' legal problems in some administrative proceedings and other contexts, but the lawyer's monopoly, for which courts have primary responsibility, is broad and consequential.

Four coauthors—Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan, and Alyx Mark—uncovered one effort to offset overly restrictive UPL rules.⁴ They describe how unrepresented parties in domestic violence cases in two jurisdictions receive help from “a shadow network of nonlawyer advocates,” with the knowledge, tacit consent, and collaboration of the trial judges.⁵ Working in or near the courthouses, domestic violence advocates in these jurisdictions meet with domestic violence survivors, counsel survivors (while professedly refraining from “advising” them), and help survivors develop evidence and draft their petitions. Judges with heavy dockets rely on the advocates to help survivors in these ways and also draw on advocates' views in making institutional changes. The authors describe this as an example of the “de facto deregulation of the lawyer's monopoly” and explore questions raised by courts' unwillingness or inability to make the advocates' role more visible and to discuss it publicly.⁶

Presumably, these trial courts keep domestic violence advocates in the shadows because they have doubts about their power to authorize nonlawyers to practice law in their courts. A state's high court could undoubtedly adopt a rule or issue a ruling allowing nonlawyers to assist domestic violence survivors under specified conditions, but trial courts may be unsure whether this kind of authority trickles down to them. The trial judges' reluctance to publicly authorize nonlawyer advocates' work means that they cannot adopt explicit rules regulating this work and that the advocates themselves must limit the help they can provide, in order to maintain that, by counseling rather than advising, and by keeping silent in court, they avoid practicing law.

No doubt, the ad hoc, sub rosa, implicit “authorization” of domestic violence advocates better serves the survivors and the courts than the alternative of strictly enforcing UPL rules in a manner that leaves survivors entirely on their own or with a modicum of help from overtaxed judges. But one must wonder why judiciaries do not expressly permit these advocates' work and other work like it performed by nonlawyers. It is hard to imagine that the courts and public are best served when nonlawyers help unrepresented parties in the shadows or not at all.

No problem of courts' making, and therefore in their power to solve, is more acute than that of access to justice for low- and middle-income clients. Professor Steinberg and her colleagues remind us that it is only because courts fail to let nonlawyers help unrepresented people with their legal

PRAC. TODAY (Nov. 13, 2020), <https://www.lawpracticetoday.org/article/arizona-utah-jumpstart-legal-regulatory-reform> [<https://perma.cc/C26M-W2VC>].

4. Jessica K. Steinberg et al., *Judges and the Deregulation of the Lawyer's Monopoly*, 89 FORDHAM L. REV. 1315 (2021).

5. *Id.* at 1316.

6. *Id.*

problems that domestic violence advocates are driven into the shadows in the jurisdictions Professor Steinberg and her colleagues studied—and worse, that domestic violence survivors elsewhere and so many others must handle legal problems on their own when they so desperately need help that might otherwise be provided by educated and regulated nonlawyers.

II. LICENSING PROCESSES

Judicial authority over legal practice also includes the power to license lawyers. Each state judiciary oversees admission to the state's bar, meaning that each state judiciary decides what one must do to be licensed as a lawyer in the state—for example, whether applicants to the bar must graduate from an accredited law school and what they must study, whether applicants must take a bar exam and if so, what will be tested, and what applicants must go through to demonstrate the requisite “character” to practice law.

In her article on the state judicial licensing processes, Cassandra Burke Robertson challenges whether contemporary bar exams are necessary and sufficient to ensure law school graduates' competence to practice law, as broadly defined by courts.⁷ She points to evidence that these exams, exclusionary in origin, still undermine racial, socioeconomic, and gender diversity and she makes the case that the exams poorly test competence because they put a premium on memorization and are not oriented to the work that any particular new lawyer plans to do. Bar exams are currently changing to become more useful and less discriminatory,⁸ but Professor Robertson proposes more substantial changes not only to the exams but to the licensing process itself. She argues for eliminating the bar exam—that is, providing a “diploma privilege”—for law school graduates who practice in organizations and for others who are not appearing in court or handling clients' funds. Professor Robertson argues that evaluations should focus on the particular work that the remaining others will actually perform.

One peculiarity of the state court licensing process is that a state law license does not necessarily authorize a lawyer to practice law outside the particular state. Each state judiciary decides what out-of-state lawyers who come to their states may do. Typically, a judge presiding over a case has the power to allow an out-of-state lawyer on a *pro hac vice* basis to represent a party in that particular case. State courts also adopt rules allowing out-of-state lawyers to practice in the state temporarily, in certain circumstances, outside court. But law licenses do not function like drivers' licenses: state courts do not generally offer reciprocity to lawyers from other states.

Gabriel “Jack” Chin reminds us of a further peculiarity of our federal system: that a state law license likewise does not entitle a lawyer to represent

7. Cassandra Burke Robertson, *How Should We License Lawyers?*, 89 *FORDHAM L. REV.* 1295 (2021).

8. See Stephanie Francis Ward, *Big Changes for Bar Exam Suggested by NCBE Testing Task Force*, *ABA J.* (Jan. 4, 2021, 1:48 PM), <https://www.abajournal.com/news/article/big-changes-for-bar-exam-suggested-by-ncbe-testing-task-force> [<https://perma.cc/5S2G-J6H2>].

a client in *federal* court.⁹ To represent a client in a federal district court or court of appeals, the lawyer must seek admission to that particular court's bar or seek admission in a particular proceeding *pro hac vice*. Moreover, after a state-licensed lawyer gains admission to the bar of a particular federal district court, the lawyer is not now entitled to practice law in all other federal district courts. Professor Chin argues that this makes no sense, at least in criminal cases, since "federal criminal practice involves application of a single body of substantive criminal law, evidence, procedure, and sentencing law."¹⁰ Ultimately, this additional restriction, which cannot always be overcome by *pro hac vice* admission, burdens not only individual lawyers but also would-be clients who may be denied their counsel of choice.

III. PROFESSIONAL CONDUCT RULEMAKING

Along with courts' power to define law practice, and to say who may undertake it, comes the power to adopt rules regulating lawyers' conduct. Busy state judiciaries do not draft the rules themselves or oversee the rule drafting process, however. They largely rely on the American Bar Association (ABA), which drafts the Model Rules of Professional Conduct,¹¹ and on their own state bar associations, which, critics say, often favor lawyers' self-interest.¹²

To give a contemporary example: the District of Columbia Bar Association has floated a proposal to limit sophisticated corporate clients' ability to negotiate with their lawyers for greater protections than afforded by conflict of interest rules or other rules governing the lawyer-client relationship.¹³ Apparently, it is increasingly common for corporations to ask their lawyers to adhere to "outside counsel guidelines" that include restrictions such as a promise by the lawyers not to act adversely to corporate affiliates or a promise not to represent competitors.¹⁴ In preventing lawyers from putting loyalty, competence, and confidentiality at risk, conflict of interest rules are meant to establish the "floor" below which lawyers may not go, but the new rule would turn them into a ceiling: ostensibly to protect future clients' access to a broader array of lawyers,¹⁵ the rule would forbid

9. Gabriel J. Chin, *Toward National Criminal Bar Admission in U.S. District Courts*, 89 FORDHAM L. REV. 1111 (2021).

10. *Id.* at 1124.

11. MODEL RULES OF PRO. CONDUCT (AM. BAR ASS'N 2020).

12. See Emily S. Taylor Poppe, *Evidence-Based Promulgation: Reconsidering the Rulemaking Process for Rules of Professional Conduct*, 89 FORDHAM L. REV. 1275, 1278 n.26 (2021).

13. See D.C. BAR RULES OF PRO. CONDUCT REV. COMM., DRAFT REPORT PROPOSING CHANGES TO THE D.C. RULES OF PROFESSIONAL CONDUCT RELATING TO CLIENT-GENERATED ENGAGEMENT LETTERS AND OUTSIDE COUNSEL GUIDELINES 5 (2020), <https://www.dcbar.org/getmedia/47f95789-27ca-4369-bbf4-3cab2097c32e/Draft-Report-on-OCGs-for-comment-11-12-2020-FN> [<https://perma.cc/GGP3-A4BK>].

14. See *id.* at 3.

15. See *id.* (noting the belief that outside counsel guidelines "unduly restrict the public's access to legal representation").

lawyers from negotiating for more loyalty than the conflict of interest rules require. It seems fairly obvious whose interests the proposed rule is really meant to protect, however.

Emily S. Taylor Poppe notes that critics responding to the problem of regulatory capture, as well as those concerned with “the profession’s ongoing failure to address inequalities in access to justice,” typically advocate for other institutions to take responsibility for drafting professional conduct rules.¹⁶ She proposes, however, that state judiciaries improve their own rulemaking processes by adopting “evidence-based promulgation,” which would include “drawing on best practices developed in other rulemaking contexts, developing mechanisms for integrating external expertise, formalizing consumer protections, and considering the composition of rulemakers.”¹⁷ Among the reforms that would follow, says Professor Poppe, would be to reduce the bar’s influence by drawing on the expertise of nonlawyers and particularly consumers of legal services, as well as diversifying the bodies that decide which rules to adopt.¹⁸ If successful, these procedural reforms would lead to better professional conduct rules and legitimize the bar’s influence over their development.

John S. Dzienkowski and John M. Golden similarly propose that, in adopting and interpreting professional conduct rules, state courts make procedural changes but of a different sort.¹⁹ They find inspiration in how federal courts review regulations adopted by administrative agencies and how they review agency opinions on questions of statutory interpretation. First, the coauthors advocate that before adopting rules proposed by bar associations, courts take a “hard look” at how the proposed rules were developed to ensure that the bar gave outsiders a meaningful chance to comment and responded reasonably and ultimately that the bar provided reasoned, not arbitrary, justifications for the proposed rules.²⁰ Second, in deciding how much weight to give to a bar association’s opinion about what a rule means, courts should consider “the quality of the [bar’s deliberative] process and the reasoning that generated” the opinion.²¹

It is important for courts to attend to the professional conduct rules and the processes by which they are adopted, rather than simply rubber-stamping bar associations’ proposals, because the rules matter. True, they may unjustifiably promote lawyers’ self-interest, but conversely, as Anna Offit shows, they may also serve the public good.²² Professional conduct rules are not simply codifications of long-held and commonly accepted

16. Poppe, *supra* note 12, at 1276.

17. *Id.* at 1280.

18. *Id.* at 1285–88.

19. John S. Dzienkowski & John M. Golden, *Reasoned Decision-Making for Legal Ethics Regulation*, 89 FORDHAM L. REV. 1125 (2021).

20. *Id.* at 1126–27.

21. *Id.* at 1148.

22. Anna Offit, *Playing by the Rule: How ABA Model Rule 8.4(g) Can Regulate Jury Exclusion*, 89 FORDHAM L. REV. 1257 (2021).

understandings. They have the power to change how lawyers behave, she explains, because, wholly apart from instilling fear of formal discipline, the professional conduct rules have an expressive function that discourages bad conduct, and they serve as a basis for informal sanctioning by one's peers. The rules are vitally important, she asserts, "as both a moral compass and practical deterrent for self-conscious practitioners."²³

Offit's focus is on ABA Model Rule 8.4(g), a controversial rule recently broadened by the ABA.²⁴ The rule targets harassment and discrimination in the practice of law that is based on race, sex, religion, and other specified characteristics. Professor Offit's interest is in the rule's power to discourage lawyers' discriminatory use of peremptory challenges in jury trials. She points to an explanatory comment recognizing that the rule does not proscribe "legitimate advocacy" and, in particular, that a rule violation is not established whenever a court finds that an advocate violated *Batson v. Kentucky*²⁵ by using a peremptory challenge discriminatorily.²⁶ Professor Offit underscores the comment's implication: that, under some circumstances, *Batson* violations *do* violate the rule. She also emphasizes the rule's extension to conduct that the lawyer "reasonably should know" is discriminatory or harassing. Professor Offit is optimistic that the rule "can encourage greater vigilance, care, and consciousness of *Batson* on the part of attorneys engaged in routine assessments of prospective jurors."²⁷

Along with courts' power to shape lawyers' behavior by adopting professional conduct rules comes oversight of the disciplinary processes through which these rules are enforced. State supreme courts have the last word on whether a lawyer has violated the rules and should be sanctioned, possibly by being suspended or disbarred for doing so. Nancy Leong examines state courts' disciplinary processes with an eye toward their enforcement of Model Rule 8.4(g) and emphasizes the problem caused by many state supreme courts' lack of racial and gender diversity.²⁸ A court is likely to interpret the rule differently, she argues, if the court is diverse, rather than all white and mostly male.²⁹ And diverse judges are more likely to empathize with lawyers and victims with whom they identify.³⁰ Therefore, the demographic makeup of state courts "is a feature of the attorney regulation system that carries substantive consequences."³¹ The problem is compounded, Professor Leong argues, because the disciplinary process operates largely in secret.³²

23. *Id.* at 1273.

24. MODEL RULES OF PRO. CONDUCT r. 8.4(g) (AM. BAR ASS'N 2020).

25. 476 U.S. 79 (1986).

26. Offit, *supra* note 22, at 1271–73.

27. *Id.* at 1271.

28. Nancy Leong, *State Court Diversity and Attorney Discipline*, 89 FORDHAM L. REV. 1223 (2021).

29. *Id.* at 1233–34.

30. *Id.* at 1227–28.

31. *Id.* at 1234.

32. *Id.* at 1232.

IV. SUPERVISION OF ADVOCATES

Another source of courts' authority over the bar is individual judges' power to regulate lawyers appearing before them by establishing and enforcing standards of conduct. Trial courts are not limited to referring lawyers' misconduct to disciplinary authorities. They can employ a host of formal and informal sanctions and remedies (monetary sanctions, disqualification of counsel, suppression of evidence, and rebukes and other forms of shaming, among others) for a host of transgressions (filing frivolous claims, courtroom misconduct, and conflicts of interest, among others). Nor are courts limited to applying professional conduct rules and other laws. They have inherent authority to establish further expectations for advocates via ad hoc decision-making. In contravention of the notion that judges, like umpires,³³ have a limited role, consider trial judges' role when they sanction courtroom misbehavior by employing their power to summarily hold lawyers in contempt of court: in that event, the judge acts as witness, prosecutor, adjudicator, and sentencer.³⁴

Adam M. Gershowitz examines how trial courts regulate criminal prosecutors in particular.³⁵ There is an ever-growing body of literature on prosecutorial misconduct and what to do about it. Of particular concern is prosecutors' failures to comply with disclosure obligations under *Brady v. Maryland*³⁶ and other law, but prosecutors' *Batson* violations and their improper jury arguments are also recurring concerns. Recognizing that these transgressions are often the result of inadequate training, not venality, Professor Gershowitz proposes an innovation that would test the limits of courts' regulatory power: individual judges might require that, to be allowed to appear in the judge's courtroom, prosecutors first be trained on their professional obligations.³⁷ While recognizing that professional education requirements are ordinarily imposed by state supreme courts or legislatures, not by individual trial judges, Professor Gershowitz identifies three possible sources of authority: trial courts' "inherent authority to regulate the lawyers who appear before them," their rarely used power to ban prosecutors for acts of misconduct, and the gatekeeping authority they employ when ruling on pro hac vice motions.³⁸ Professor Gershowitz's discussion underscores that regulating law practice is not just a task for judiciaries but is also a

33. See *supra* note 1 and accompanying text.

34. See Bruce A. Green, *Federal Courts' Supervisory Authority in Federal Criminal Cases: The Warren Court Revolution That Might Have Been*, 49 STETSON L. REV. 241, 263 (2020) ("The very idea of the summary criminal contempt process, in which the trial judge serves essentially as grand jury, prosecutor, victim, witness, trial judge, and sentencer, challenges ordinary notions of fair process.").

35. Adam M. Gershowitz, *The Race to the Top to Reduce Prosecutorial Misconduct*, 89 FORDHAM L. REV. 1179 (2021).

36. 373 U.S. 83 (1963).

37. Gershowitz, *supra* note 35, at 1180.

38. *Id.* at 1190.

responsibility of individual judges and that trial judges' considerable power implies an obligation to use it as necessary to improve professional practice.

One particular context where trial judges do recognize their responsibility to actively supervise lawyers' conduct is in class action lawsuits, where, Brian T. Fitzpatrick observes, trial judges are sometimes characterized as fiduciaries for absent class members.³⁹ Accordingly, civil procedure rules assign tasks to trial judges that they do not have in conventional litigation, including deciding early on whether a would-be lawyer for the class is adequate to serve in that role. Professor Fitzpatrick looks at trial judges' task at the end of a successful class action to set class counsel's fees. He draws on agency law to argue "that judges should set fees in the same way rational class members would have set them at the outset of the case if they had had the opportunity to do so."⁴⁰ This requires keeping in mind that like clients, judges have limited ability to monitor lawyers to ensure they are not serving their own interests by making quick but inadequate settlements, on the one hand, or by dragging out the litigation, on the other. For guidance on how rational plaintiffs negotiate fees to avoid the agency costs of monitoring counsel, Professor Fitzpatrick examined how sophisticated corporate clients hire litigators on a contingency fee basis. He found that corporate plaintiffs typically agree to a contingent fee based either on a fixed percentage of the recovery or on percentages that increase as the litigation moves forward.⁴¹ This practice calls into question how judges, relying on received wisdom, often set fees in successful class actions—that is, either by lowering the lawyer's percentage of the recovery as the recovery increases or by capping the amount of the recovery in light of the lodestar (the amount that class counsel would have been paid on an hourly fee basis).⁴²

For better or worse, trial judges regulate advocates' conduct in many ways, and setting class counsel's legal fees is just one of them. Professor Fitzpatrick's argument that, in this example, trial judges fall short in employing their regulatory—and fiduciary—authority, leads to the question of who has responsibility for convincing trial judges to do better. In this example, the candidates include civil procedure rule drafters, appellate courts, and class counsel in their advocacy role. But it seems inescapable that trial judges are ultimately responsible for how they exercise their authority in general and in the class action setting in particular. Among other things, this calls for questioning received wisdom.

39. Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORDHAM L. REV. 1151 (2021).

40. *Id.* at 1152.

41. *Id.* at 1161–63.

42. *Id.* at 1166–70.

V. JUDICIAL SELF-REGULATION

The characterization of law as a “self-regulating profession” has been derided as a “myth,”⁴³ given that lawyers are not regulated by bar associations but by courts as well as by other institutions.⁴⁴ By contrast, judges and judiciaries, which adopt and enforce codes of judicial conduct, are fairly described as self-regulating. Consequently, judicial conduct rules, to an even greater extent than professional conduct rules, are subject to regulatory capture.

At the same time, like professional conduct rules, judicial conduct rules can serve the public. Toward that end, Tom Lininger argues that the ABA Model Code of Judicial Ethics,⁴⁵ from which most state courts draw in adopting their state judicial conduct codes, should explicitly address low-income individuals’ needs.⁴⁶ Right now, he argues, the adjudicative system is stacked against low-income litigants, most of whom are unrepresented in civil cases and many of whom are represented poorly in criminal cases. He offers eight proposals to make the process fairer and less discriminatory toward low-income individuals. Among these, Professor Lininger suggests amending judicial conduct provisions to call on judges “to promote access to justice” and to promote procedural and substantive fairness without regard to parties’ and witnesses’ resources or ability to secure counsel. Further, the rules should require judges to enable all litigants, including those representing themselves, “to be fairly heard.”⁴⁷ In criminal cases, he would assign judges a responsibility to monitor criminal defense lawyers’ caseloads and to ensure in general that they are performing competently and free of conflicts of interest.⁴⁸ And, addressing the subject of a recent ABA opinion,⁴⁹ Lininger proposes judicial conduct rules requiring that before incarcerating or punishing litigants for failing to make required payments of fines, fees, and bail, judges inquire to ensure that these litigants actually have the ability to pay.⁵⁰

Finally, Renee Knake Jefferson looks at the less benevolent side of judicial conduct: how judiciaries deal with judges’ sexual misconduct.⁵¹ Although the federal judiciary amended the Code of Conduct for United States Judges in 2019 to expressly target judges’ sexual misconduct and harassment of law clerks and others in the judicial workplace, Jefferson views this as a tepid

43. See, e.g., Fred C. Zacharias, *The Myth of Self-Regulation*, 93 MINN. L. REV. 1147 (2009).

44. See Poppe, *supra* note 12, at 1276 (“Lawyers increasingly face regulation from other quarters.”).

45. MODEL CODE OF JUD. CONDUCT (AM. BAR ASS’N 2010).

46. Tom Lininger, *Judges’ Ethical Duties to Ensure Fair Treatment of Indigent Parties*, 89 FORDHAM L. REV. 1237 (2021).

47. *Id.* at 1246.

48. *Id.* at 1247–48.

49. ABA Comm. on Ethics & Pro. Resp., Formal Op. 490 (2020).

50. Lininger, *supra* note 46, at 1249–50.

51. Renee Knake Jefferson, *Judicial Ethics in the #MeToo World*, 89 FORDHAM L. REV. 1197 (2021).

response to a problem that is largely discussed only in “whisper networks.”⁵² She calls for changing judicial cultures through a combination of official acknowledgments when judges are found to have engaged in sexual misconduct and more concrete reforms: “a comprehensive harassment policy” including “a confidential reporting system”; a national clearinghouse with responsibility for policymaking, training, and processing complaints; annual reporting of complaints; procedural rules making judges more accountable; and a ban on judges’ romantic and sexual relationships with judicial personnel.⁵³ Jefferson closes with a challenge to the concept of judicial self-regulation: “if the courts will not police their own, legislatures should step in and do so.”⁵⁴

CONCLUSION

While each piece in this collection examines a discrete topic, the writings collectively pose a challenge to how courts fulfill their responsibility to oversee the practice of law, including judges’ own conduct. Largely as a matter of happenstance rather than forethought, regulatory power—e.g., licensing, rulemaking, professional discipline, trial sanctioning, class action oversight—is divided among federal and state judiciaries and individual trial judges. From the perspective of the bar, to whom the least regulation may seem best, the disaggregation of regulatory authority among different judicial bodies and judges may be welcome: like the division of executive authority among administrative agencies, the division of power among different courts and judges serves as a check on overregulation and abuse. But the results may also include discordant regulatory approaches, overreliance on bar associations, and the failure to use regulatory power to salutary ends.

The writings here address a host of problems in how justice is administered, particularly with respect to vulnerable individuals—low-income litigants who cannot secure lawyers, criminal defendants, absent class members, and victims of sexual harassment to name a few. These are problems for which courts should take responsibility, whether because they are created or exacerbated by courts or because courts have the power to address them, or both. The writings alert us to the risk that judges will use their considerable regulatory power to serve lawyers’ interests or their own interests, but they also underscore judges’ ability to use their power for the public good, including in innovative ways. The writings call, explicitly or implicitly, for reconsidering received traditions and settled practices—including by reconsidering the bar exam, federal district courts’ separate admission processes, or methods for setting legal fees in class actions. The pieces also call for reconsidering courts’ processes for adopting professional conduct rules, for interpreting the rules, and for deciding whether and how to discipline lawyers for violating the rules. On balance, the writings call for greater engagement—dare one say “activism”—on the part of judiciaries

52. *Id.* at 1201–02.

53. *Id.* at 1218.

54. *Id.* at 1221.

and judges in the work of regulating the practice of law, the bar, and the judiciary itself.

I close by expressing my gratitude to the authors who contributed their works to this collection and participated in the Colloquium out of which it grew; to the current and outgoing *Fordham Law Review* editors and staff for editing this collection and helping to organize the Colloquium; and to generations of *Fordham Law Review* editors past, present, and future, for their ongoing commitment to scholarship, like the work contained in this collection, that advance discussion and understanding of the legal profession. This year's Colloquium pieces should get judges thinking!