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Legal Malpractice Claims: What the Data Indicate

Vincent R. Johnson

St. Mary's University School of Law, vjohnson@stmarytx.edu

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BOOK REVIEW

Vincent R. Johnson

Legal Malpractice Claims: What the Data Indicate

When Lawyers Screw Up:

Improving Access to Justice for Legal Malpractice Victims

by Herbert M. Kritzer & Neil Vidmar

University Press of Kansas, Lawrence, Kansas, 231 pages

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Author. Vincent R. Johnson is the South Texas Professor of Law at St. Mary's University. He teaches and writes in the areas of torts, professional responsibility, legal malpractice law, and government ethics. Professor Johnson has served as a Fulbright Scholar in Burma, China, and Romania. An elected member of the American Law Institute, he earned a B.A. at St. Vincent College, a J.D. at the University of Notre Dame, an L.L.M. at Yale University, and an executive L.L.M. at the London School of Economics and Political Science. By appointment of the Texas Supreme Court, Professor Johnson serves as a member of the Texas Committee on Disciplinary Rules and Referenda.

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I. BEYOND DOCTRINE

Herbert M. Kritzer at the University of Minnesota and Neil Vidmar at Duke University recently published a new book which usefully expands our knowledge about legal malpractice claims. Entitled *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims*,¹ the book goes far beyond merely explaining legal malpractice doctrine.

The authors carefully examine the incomplete data that are available from bar organizations, insurers, governmental entities, and other sources to see what they reveal about how legal malpractice law operates. The authors consider why claims arise, how they are litigated or settled, and whether aggrieved clients and third parties are adequately protected.²

In particular, the authors explore the importance of professional liability insurance to the viability of claims and the differences between medical professional liability (MPL) and legal professional liability (LPL). The very readable text of the book is driven by a data-crunching analysis of relevant statistical information, as well as interviews the authors conducted with insurers and lawyers who practice legal malpractice law. The book contains

1. HERBERT M. KRITZER & NEIL VIDMAR, *WHEN LAWYERS SCREW UP: IMPROVING ACCESS TO JUSTICE FOR LEGAL MALPRACTICE VICTIMS* (2018) [hereinafter *WHEN LAWYERS SCREW UP*].

2. *See id.* at 5–7 (discussing types of error or behavior common in legal professional liability claims).

more than three dozen useful illustrative tables and figures. One particularly interesting table appears to show that according to three different sources, more legal malpractice claims arise from substantive errors³ than from deadline-related errors, other administrative errors, client relations behavior, or intentional wrongs.⁴

The numbers and conclusions are presented in a context sufficient to educate nonexperts about the basis⁵ and complexity of legal malpractice claims,⁶ but not so detailed as to prove tedious to persons well acquainted with the field. Chapter 5 contains a dizzying exploration of the data related to lawsuits, claimant success, and payments.⁷ Those pages may be slow-going for readers not trained in statistical analysis, but, in general, the text is accessible, illuminating, and engaging.

There is a short discussion of the relationship between professional disciplinary actions and LPL litigation.⁸ The authors note that lawyers for malpractice plaintiffs often discourage “their clients from pursuing an ethics complaint while the LPL claim [is] pending” because “the ethics complaint would put the defendant’s license to practice at risk, and that would stiffen the defendant’s resistance to the LPL claim.”⁹

3. “Substantive errors” are defined to include: “[f]ailure to know/properly apply law”; “[i]nadequate discovery/investigation”; “[p]lanning error/procedure choice”; “[c]onflict of interest”; “[e]rror in public record search”; “[f]ailure to understand/anticipate tax issues”; and “[m]ath calculation error.” *Id.* at 85 tbl.4.4.

4. *Id.* “Deadline related” errors include: “[p]rocrastination in performance/follow-up; [f]ailure to calendar properly; [f]ailure to react to calendar; [and] [f]ailure to know/ascertain deadline[.]” *Id.* “Other administrative errors” include: “[l]ost file, document evidence; [e]rlerical error; [f]ailure to file document/no deadline.” *Id.* “Client relations” errors include: “[f]ailure to obtain consent/inform client; [f]ailure to follow client’s instructions; [i]mproper withdraw of representation.” *Id.* “Intentional wrongs” include: “[f]raud”; “[m]alicious prosecution/abuse of process”; “[v]iolation of civil rights”; and “[l]ibel or slander”. *Id.*

5. *Id.* at 46–57 (discussing negligence, breach of fiduciary duty, breach of contract, fraud and misrepresentation, causation of damages, statutes of limitations, and the actual innocence rule that strictly limits LPL claims arising from criminal defense).

6. *See id.* at 19–36 (surveying ten illustrative cases).

7. *See id.* at 94, 94–123 (“[T]he outcome of claims varied substantially depending on the area of practice involved and the nature of the alleged error.”).

8. *Id.* at 57–60.

9. *Id.* at 59; *see also id.* at 155 (advising clients to delay the filing of an ethics complaint while the LPL suit is pending); *cf.* Vincent R. Johnson, *Legal Malpractice Litigation and the Duty to Report Misconduct*, 1 ST. MARY’S J. ON LEGAL MAL. & ETHICS 40, 73 (2011) (“According to the *Restatement*, ‘The duty to disclose wrongdoing by another lawyer typically does not require disclosure of confidential client information’” (quoting RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 5 cmt. i (AM. LAW INST. 2000))).

II. LEGAL MALPRACTICE VERSUS MEDICAL MALPRACTICE

One of the many interesting facts that emerges from the book is that malpractice insurance is more costly for lawyers than for doctors. “[L]iability insurance costs constitute about 1.3 percent of overall revenue for lawyers compared with only 1.0 percent for physicians and surgeons.”¹⁰ This is surprising because concerns about the “skyrocketing” costs of medical malpractice insurance premiums have driven wave after wave of tort reform in that field,¹¹ but there has been virtually no tort reform to protect lawyers from legal malpractice claims.¹²

The authors find that “the differences between MPL and LPL are so vast that relatively little about the empirical world of LPL can be assumed to be the same as that for MPL.”¹³ Notably:

[Because] most medical doctors want to have admitting privileges at a hospital, and hospitals typically require that those with admitting privileges carry liability insurance[,] . . . few physicians practice without insurance in contrast to the substantial number of lawyers lacking insurance. This is important because of the unwillingness of knowledgeable lawyers to prosecute LPL claims if the defendant is uninsured¹⁴

10. WHEN LAWYERS SCREW UP, *supra* note 1, at 4.

11. For example, the Texas “[L]egislature enacted the Medical Liability Act to remedy the so-called medical malpractice insurance ‘crisis’ arising from an inordinate increase in the frequency of health care liability claims and the amounts being paid out on these claims, resulting in a shortage of affordable medical malpractice insurance.” Darrell L. Keith, *The Texas Medical Liability and Insurance Improvement Act—A Survey and Analysis of Its History, Construction and Constitutionality*, 36 BAYLOR L. REV. 265, 266 (1984); see also Brian W. Boelens, *Weaver v. Myers: The Future of Ex Parte Communication in Florida Medical Malpractice*, FLA. B. J., July/Aug. 2018, at 22, 23 (noting in Florida, “presuit processes were enacted in order to encourage parties to settle at an early stage without full adversarial proceedings, with the aim of reducing both litigation expenses and insurance premiums”); Lauren Elizabeth Rallo, Comment, *The Medical Malpractice Crisis—Who Will Deliver the Babies of Today, The Leaders of Tomorrow?*, 20 J. CONTEMP HEALTH L. & POLY 509, 509 (2004) (“Skyrocketing medical liability premiums are forcing doctors in high-risk specialty areas, such as obstetrics, to stop practicing medicine.”).

12. See VINCENT R. JOHNSON, LEGAL MALPRACTICE LAW IN A NUTSHELL 6 (2d ed. 2016) (“In recent years, state legislatures have enacted numerous statutes to limit the liability of doctors. However, widespread ‘tort reform’ for the benefit of lawyers is not on the horizon. Only a few states have attempted to pass comprehensive legislation. One notable example is the Alabama Legal Services Liability Act. Lawyers, it seems, are not viewed with the same sympathy as those who practice medicine—or at least they have not effectively lobbied for legislative protection from legal liability” (citation omitted)).

13. WHEN LAWYERS SCREW UP, *supra* note 1, at 60.

14. *Id.*

Interestingly, the authors note that in contrast to most LPL policies, “[F]ew medical liability policies have deductibles requiring physicians to bear some part of the loss In MPL policies, the cost of defense is generally in addition to the indemnity coverage . . . whereas LPL policies seldom provide for unlimited defense costs.”¹⁵ This means that physicians may have an economic incentive to fight claims (because the insurer is paying for the defense), while lawyers have an “incentive to settle,”¹⁶ particularly with respect to small claims.

There is some evidence that shows that insurance payments that resolve a case by paying policy limits are “much less common in cases of LPL” than in medical malpractice cases.¹⁷ MPL plaintiffs are more likely than LPL plaintiffs to enjoy the benefits of being represented by experienced counsel. According to the authors, “[M]ost LPL claims are prosecuted by lawyers who have little or no experience in handling such cases. This is in contrast to medical malpractice, in which a large percentage of cases are brought by lawyers with substantial experience in handling such cases.”¹⁸

III. TWO HEMISPHERES OF LAWYER PROFESSIONAL LIABILITY

The authors’ “central argument is that LPL cannot be viewed as a unitary phenomenon. Rather, there are two distinct LPL worlds, one involving claims in the context of legal services for individuals and family businesses and one for claims arising from work on behalf of large corporate entities.”¹⁹ The authors maintain that there are two hemispheres of lawyer’s professional liability because there are

sharp differences in LPL along the corporate/personal services divide: the frequency of LPL claims, the areas of practice producing LPL claims, the kinds of errors or behaviors asserted in claims, the amounts at stake in claims, and the amounts ultimately paid out to resolve claims all differ depending on whether the claim arises from types of legal services that serve primarily individuals and their small businesses or those that serve large corporations.²⁰

15. *Id.* at 61.

16. *Id.* at 63.

17. *Id.* at 106.

18. *Id.* at 166–67.

19. *Id.* at 4.

20. *Id.* at 4–5.

The chapters of the book amply muster the evidence related to the authors' two-hemisphere thesis. The question is: what does this mean? Most likely, it means that risk management, litigation, and dispute resolution are likely to be handled in very different ways depending on the hemisphere of liability that is relevant. However, it does not mean that the relevant legal principles are likely to be different. Having served as an expert in scores of legal malpractice cases over the past thirty years—many arising from personal or small-business representation, and many others involving large corporate matters—I can say that the key legal principles are much the same. They deal with such matters as the existence of an attorney-client relationship,²¹ the scope of the engagement,²² informed-consent disclosure obligations,²³ conflicts of interest,²⁴ proximate causation,²⁵ and duties arising from disciplinary rules²⁶ or basic principles of the law of negligence,²⁷ fiduciary duty,²⁸ or misrepresentation.²⁹ The same legal principles apply in both hemispheres of lawyer professional liability, with appropriate adjustments that take into account the sophistication of the

21. See Susan Saab Fortney & Vincent R. Johnson, *Legal Malpractice*, in LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION § 5-2.1(a)(1) (2018) (discussing formation of lawyer-client relationships); see also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14 (AM. LAW INST. 2000) (instructing when a lawyer-client relationship arises).

22. See Fortney & Johnson, *supra* note 21, § 5-2.1(b) (“A lawyer’s duties to a client normally extend only as far as the scope of the representation. Thus, a lawyer who serves as general counsel to a corporation has a much greater range of potential liability than a lawyer hired by a corporation to handle only an isolated matter.”).

23. See *id.* § 5-3.3 (clarifying duties of lawyers to disclose information when seeking to obtain informed consent); see also Vincent R. Johnson, “*Absolute and Perfect Candor*” to Clients, 34 ST. MARY’S L.J. 737, 742–53 (2003) (discussing disclosure obligations under the law of negligence and fiduciary duty).

24. See JOHNSON, *supra* note 12, at 401–41 (“Conflict of interest is, in many respects, the most difficult and important subject with the law of legal malpractice.”).

25. See Vincent R. Johnson, *Causation and “Legal Certainty” in Legal Malpractice Law*, 8 ST. MARY’S J. ON LEGAL MAL. & ETHICS 374, 380 (2018) (“In legal malpractice litigation, the most difficult challenge for plaintiffs is often proving that a breach of duty caused damages.” (footnote omitted)).

26. See Douglas R. Richmond, *Why Legal Ethics Rules Are Relevant to Lawyer Liability*, 38 ST. MARY’S L.J. 929, 961 (2007) (“[W]idespread resistance to the use of ethics rules in civil litigation against lawyers is futile.”).

27. See Fortney & Johnson, *supra* note 21, § 5-2 (“Negligence is the most important cause of action in the field of lawyer liability.”).

28. See *id.* § 5-3.1 (“[T]he lawyer-client relationship is not a mere arms-length transaction, but rather a relationship of trust and confidence. As a matter of law, the lawyer serves as the client’s fiduciary. This means that lawyers must always act with the clients’ interests in mind, and those interests must come first.”).

29. See *id.* § 5-4.2 (“[F]raud is seriously wrongful conduct, and a lawyer found to have acted fraudulently may be liable not only for compensatory damages . . . but punitive damages, too.”).

client³⁰ or the management structure of entity-clients.³¹ There is not one body of law for claims arising from representation of large businesses and another body of law governing claims by individual and small businesses. The same complex body of law applies to all legal malpractice claims. The authors do not suggest otherwise.

IV. WHAT THE DATA SHOW

The authors conclude that:

- “[C]orporate firms appear to face fewer claims, at least as measured on a ‘per lawyer’ basis[.]”³² but the claims they do face are “likely to be much more severe in terms of the potential loss involved[.]”³³
- “Lawyers experienced in prosecuting legal malpractice cases seldom take on a case if the lawyer-defendant is uninsured”³⁴ or if the plaintiff’s losses are insufficient “to produce what the lawyer views as an adequate fee[.]”³⁵

30. See JOHNSON, *supra* note 12, at 412–13 (“Client sophistication plays an important role in determining whether it is reasonable to ask for consent to a conflict of interest and what disclosures are required. The more sophisticated the client, the easier it is for the law to conclude that consent was possible and that sufficient information about risks and alternatives was disclosed.”); see also Vincent R. Johnson & Stephen C. Loomis, *Malpractice Liability Related to Foreign Outsourcing of Legal Services*, 2 ST. MARY’S J. ON LEGAL MAL. & ETHICS 262, 284 (2012) (“[C]lient sophistication is such an important factor in determining whether a lawyer’s disclosure obligations to the client have been met.”).

31. See Gregory C. Sisk, *Duties to Organization/Entity Clients*, in LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION § 4-8.1 *et seq.* (2018) (“The lawyer representing an organization owes professional allegiance to the organization and not to its individual constituents, although the lawyer ordinarily is expected to respond to the lawful directions of the duly authorized constituents of the organization.”).

32. WHEN LAWYERS SCREW UP, *supra* note 1, at 5. *But see id.* at 92 (“If it were possible to measure claims on a per-matter-handled basis, or on a per-client basis, one might find that lawyers in the corporate sector produce a rate of claims not all that different, and possibly even higher, than that for lawyers in the personal services sector.”). The authors speculate that one reason that lawyers in the corporate sector face fewer claim is that “there are more likely to be procedures by which work is reviewed and checked,” and errors caught and remedied. *Id.* at 91.

33. *Id.* at 5; see also *id.* at 93 (“Although the number of claims arising in the personal services sector is much greater than in the corporate services sector, the amount of damages paid in the corporate sector tend to be much greater.”); *id.* at 122 (observing as compared to the corporate sector, the personal sector constitutes “over half of the costs associated with LPL.” but noting corporate sector LPL claims have higher damages when an error occurs).

34. *Id.* at 5; see also *id.* at 37 (reiterating it is a rare case when a lawyer assumes representation of a lawyer-defendant that is uninsured).

35. *Id.* at 11.

- “Only a small fraction of LPL claims is brought by lawyers with substantial expertise in this area[.]”³⁶
- Few lawyers specialize in representing plaintiffs in legal malpractice litigation;³⁷
- “Very few legal malpractice claims proceed to a trial and verdict[.]”³⁸
- “[A]bout one-half of LPL cases are tried without a jury[.]”³⁹
- “[A] large percentage of LPL claims do[] not result in compensation being paid[.]”⁴⁰ and
- Claims arising from a lawyer’s attempt to collect a fee are less successful than “claims in which there was no reported link to the lawyer trying to collect a fee.”⁴¹

In addition, there is some evidence that:

- “[M]any of the largest claims brought against major law firms arise from client dishonesty[.]”⁴²
- Lawyers employ “a surprising amount of variation in the fee arrangements” they use in LPL cases;⁴³

36. *Id.* at 62; *see also id.* at 152 (“It seems clear . . . that a large proportion of LPL claims is brought by lawyers who lack experience in the area, thinking such cases are no different from the other kind of negligence cases they handle.”); *id.* at 155 (“The nonspecialists . . . often have problems understanding . . . the issue of causation . . .”).

37. *See id.* at 143–56 (discussing the authors’ interviews of lawyers that litigate LPL claims and observing the overwhelming majority do not specialize in LPL claims nor do LPL claims dominate their practice).

38. *Id.* at 125. “[W]e estimate that between [two] and [three] percent of LPL claims lead to trial verdicts.” *Id.* at 126; *see also id.* at 140–41 (expanding on the discussion of trials in LPL claims); *id.* at 161 (“Few of the defense-side lawyers with whom we spoke reported doing as many as one trial a year . . .”); *id.* at 166 (“[S]ummary judgment is a pivotal point in legal malpractice suits when there is an issue of causation, and trials reaching verdict are rare in legal malpractice cases.”).

39. *Id.* at 63.

40. *Id.* at 12.

41. *Id.* at 102.

42. *Id.* at 80.

43. *Id.* at 150. According to the authors:

Although it is likely that a majority of cases had at least a significant contingency element, most of the lawyers [who were interviewed] reported that their fee arrangements varied, with some cases on a straight percentage basis; some on a straight hourly basis (two lawyers reported that *all* of their legal malpractice cases were handled on an hourly basis); some on a hybrid percentage-hourly; some on what they called a “cap convert” basis, which switches from an hourly to a

- “[C]laim repair,’ that is, finding a way to fix or mitigate the problem that led to the claim,”⁴⁴ is used to resolve a significant percentage of cases;⁴⁵ and
- Lawyers tend to avoid representing legal malpractice claimants in matters arising from earlier representation involving criminal defense, immigration, family law, workers’ compensation, patent law, or medical malpractice.⁴⁶

V. LEGAL MALPRACTICE INSURANCE

The authors’ discussion of legal malpractice insurance—including the structure and modes of purchasing LPL insurance⁴⁷—is particularly interesting, in part because they offer a comparative-law perspective.⁴⁸ The authors write that:

In most other major common-law countries, lawyers who serve private clients are required to carry professional liability insurance. Similar requirements exist for legal professionals in most European countries that draw on the civil law tradition. . . . However, as of 2016 only one state, Oregon, requires all private practitioners to carry professional liability insurance

. . . .

percentage after some hourly cap is reached; and some on a percentage plus retainer with the retainer credited toward the percentage fee if there was a recovery.

Id.

44. *Id.* at 99.

45. “Although we heard many references to claim repair in our interviews with defense lawyers and insurers, we found virtually no statistics on the frequency of claim repair. . . . Using the data obtained from [the Oregon State Bar Professional Liability Fund], we found that over the period 1990–2015, 16.6 percent of claims were disposed through repair.” *Id.* at 99–100; *see id.* at 157 (“One insurer reported that about 12 percent of the prior year’s claims had been closed after a successful claim repair.”); *id.* at 160 (“One lawyer who reported that ‘perhaps half’ of the cases opened pursuant were claim repair commented, ‘I’m retained to come in and try to fix it.’”).

46. *Id.* at 147.

47. *Id.* at 43–46.

48. *See* Herbert M. Kritzer, *Lawyers’ Professional Liability: Comparative Perspectives*, 24 INT’L J. LEGAL PROF. 73, 73–89 (analyzing lawyers’ professional liability by drawing on reports concerning a group of thirteen countries representing every continent).

. . . [S]ome other states require lawyers who organize in some form of limited liability entity to carry insurance for that entity. . . . We identified nine states with such a requirement . . . [.]⁴⁹

The authors conclude that “nationally a significant number of legal practitioners working solo or in small firms do not purchase LPL insurance”⁵⁰—the exact number is “unknown but probably substantial.”⁵¹ Yet, “lawyers in the kinds of solo and small-firm practices that serve the personal services sector are overrepresented among the lawyers facing LPL claims.”⁵² In contrast, “law firms that handle large commercial matters frequently have LPL insurance that could cover claims of \$100 million or more.”⁵³

VI. ACCESS TO JUSTICE

The authors indicate that experienced lawyers are highly selective in deciding whether to represent a potential legal malpractice plaintiff.⁵⁴ Representation is often declined even in many cases where it is likely the potential defendant committed legal malpractice because working on the case does not make economic sense.⁵⁵ “There are several reasons for this finding, ranging from the modest size of many claims to legal and procedural issues that create problems somewhat unique to LPL claims.”⁵⁶

In the final section of the book, the authors grapple with “possible ways of improving access [to justice] for those who have suffered harm.”⁵⁷ This is an issue that has been raised by other writers who have recently questioned whether, under the current regime, the odds are too severely

49. WHEN LAWYERS SCREW UP, *supra* note 1, at 38–39.

50. *Id.* at 40. “A survey of Texas lawyers in 2005 found that 36 percent of private practitioners and 63 percent of solo practitioners did not carry such insurance.” *Id.* In contrast, “Virtually all, if not all, lawyers practicing in larger firms are covered by LPL insurance purchased by the firm” *Id.* at 92.

51. *Id.* at 92.

52. *Id.* at 60.

53. *Id.* at 63.

54. *Id.* at 146 (“The most selective tended to be those who fell at the specialist end of the spectrum, with several accepting less than 1 percent . . .”).

55. *Id.* at 167 (explaining most plaintiffs’ lawyers decline potential LPL cases and nonspecialists largely refuse taking such cases altogether).

56. *Id.*

57. *Id.*; *accord id.* at 168–86 (highlighting the various ways clients are hindered from pursuing malpractice claims against their attorneys).

stacked against recovery by the law governing legal malpractice litigation.⁵⁸ As Professor Susan Fortney has argued, “[I]t is time to reexamine whether our civil liability regime provides meaningful remedies to numerous consumers injured by attorney misconduct.”⁵⁹

Kritzer and Vidmar argue that “[a] key element in the difference between the two hemispheres [of legal malpractice litigation] is the ability of clients to obtain redress when an error has caused some loss.”⁶⁰ The halls of justice are normally accessible to corporate entities, but often out of reach to individuals and small businesses. Focusing on how important it is whether a potential defendant has malpractice insurance, the authors discuss whether malpractice insurance should be mandatory, or whether lawyers should at least have to disclose to potential clients in a meaningful way that they are not covered by malpractice insurance. The authors go on to discuss alternatives for redress such as the use of legal ombudsman⁶¹ and other dispute resolution mechanisms,⁶² and even more controversial proposals such as one-way fee shifting (to make smaller cases economically feasible),⁶³ expanded use of the loss-of-a-chance doctrine,⁶⁴ and more generous

58. Johnson, *supra* note 25, at 399–400 (2018).

In legal malpractice litigation, the preponderance of the evidence standard operates against a backdrop of substantive rules which already go far—many would say too far—to protect lawyers from liability. Expert testimony is ordinarily required to establish the standard of care, and many cases fail due to the plaintiff's inability to meet this requirement. Strict privity rules, in numerous states, bar claims by most nonclients. Suits by clients may flounder because the matter in question fell outside the scope of the representation, involved a permissible exercise of lawyer discretion, or resulted in nothing more than the client's “loss of chance” to secure a more favorable result. Even otherwise meritorious claims may produce no recovery because of a statute of limitations defense. In addition, compensation for harm caused by negligence will be barred or reduced if the plaintiff's own carelessness contributed to the harm.

Id.

59. Susan Saab Fortney, *A Tort in Search of a Remedy: Prying Open the Courthouse Doors for Legal Malpractice Victims*, 85 FORDHAM L. REV. 2033, 2056 (2017); see also Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?*, 59 ALA. L. REV. 453, 491 (2008) (“It is much harder to prove legal malpractice than medical malpractice. This is because the legal profession has enjoyed several unique advantages as defendants in malpractice actions, and doctrinal changes that have been applied in medical malpractice have been barred or adopted much more slowly in legal malpractice.”).

60. WHEN LAWYERS SCREW UP, *supra* note 1, at 169.

61. *Id.* at 176–78.

62. *Id.* at 178–79.

63. *Id.* at 179–80.

64. *Id.* at 181–83.

statutes of limitations.⁶⁵ Finally, the authors anticipate, and rebut, the objections critics will raise.⁶⁶

VII. CONCLUSION

Kritzer and Vidmar's fine book is a welcome antidote to the "scant attention"⁶⁷ that has traditionally been paid by empirical research to legal malpractice litigation. As the authors recognize at every turn, the available information is incomplete,⁶⁸ and much more needs to be learned about claims against lawyers. This work of scholarship will be useful to those who think and write about the subject of lawyer professional liability.

65. *Id.* at 183–84.

66. *Id.* at 185–86.

67. *Id.* at 13.

68. *See id.* at 124 ("Although some studies and reports single out medical malpractice trials as an object of study . . . trials involving lawyers' professional liability (LPL) have not been the subject of systematic empirical examination.").