

A PERSPECTIVE FROM THE JUDICIARY ON ACCESS TO JUSTICE

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I decided early in 2009, upon becoming Chief Judge and the steward of the justice system in New York, to focus my energy on ensuring that everyone gets their day in court.

Regardless of how a person looks or where he or she was born, and regardless of whether or not a person has resources or power, justice cannot be about the color of your skin or the amount of money in your pocket. Justice must mean that when people are fighting for the necessities of life, for the roof over their heads, they must get the legal assistance that they need, and the scales of lady justice will be exquisitely balanced. Learned Hand's famous quote—"thou shall not ration justice"¹—is the one cardinal rule of our democracy.

The constitutional and moral mission of the judiciary is equal justice. This is what we do as judges going back to biblical times: "Justice, and only Justice shall you pursue;"² "both low and high, Rich and poor together."³ If, as judges, we do not fulfill this commitment, we might as well close the courthouse doors. That focus generated so many things that I am proud of in New York, and that as leaders in the access to justice movement, we can all be proud of:

- \$100 million in public funding for legal services in New York State;
- 50-hour requirement of pro bono service as a condition for admission to the New York Bar;
- A pro bono scholars program, in which law students devote their last term in law school exclusively to pro bono work in exchange for the opportunity to take the bar exam a semester early;
- Mandatory reporting of pro bono work and the financial contributions made by lawyers to legal aid;
- New rules that help to level the playing field in our courts for foreclosure and consumer credit cases; and
- Authorization of new models for non-lawyers in the courts (navigators).

1. *Address by Judge Learned Hand before the Legal Aid Society of New York, Feb. 16, 1951*, 9 NLADA BRIEFCASE 5 (1951).

2. *Deuteronomy* 16:20 (New American Standard).

3. *Psalms* 49:2 (New American Standard).

Just a few years ago, so many of these things were very controversial. Their introduction, their mere mention, created a ruckus. You would think the world was coming to an end. But, today, they are commonplace. We are making progress—here in New York, and everywhere. For so many of us in the judiciary, this endeavor and the kind of journey that we have had in New York has been energizing and contagious, and we are preaching the gospel of access to justice across this country.

As judges, we are no longer just looking at the four corners of our legal papers and briefs; we are recognizing that we must be interactive with, and responsive to, the society around us. Exciting things are happening around country in the judiciary, in red states and blue. The same things are happening for so many others dedicated to providing access to justice, including for the other participants in the A2J Summit at Fordham Law School, out of which the other pieces in this Collection spring. In different yet complementary ways we have been changing the dialogue and the landscape on access to justice.

This is the case in technology, in private law firms and businesses, in government, with the philanthropic community, at the Legal Services Corporation, in the community pursuing a civil right to counsel, in the fight for racial and economic justice, and in academia. Everywhere.

So much has been done and yet there is so much to do. The evidence shows that we still turn away more poor people than we can help who need legal assistance. People who just need a helping hand, who are not able to obtain assistance of any kind. People don't know where to turn, and indeed have no place to turn to secure their basic rights and the essentials of life.

Every human being is entitled to access to justice. It is as important to our society as our schools, our hospitals, or our housing. And at same time, we recognize the connection between access to justice and these essential institutions and capacities. Access to justice does not exist in a vacuum. In particular, we now recognize that there is only one system of justice, not civil and criminal justice systems that are separate. The average person does not know whether they are in a civil or criminal court. Their civil justice concerns are just as important as their concerns arising in the criminal justice system. Losing the roof over one's head is as traumatic as going to jail. In Ferguson, Missouri, a fine or fee in a minor traffic case leads to debtor's prison. We cannot separate the two—justice is justice! Period. And access to justice covers the lot!

We must have policy solutions that cross over the lines. The front end of the criminal justice system is in reality the front end of the civil justice system. One feeds the other. And look at what is happening in criminal justice reform—the momentum, the energy, the resources. Bail reform is a reality—the recognition that we cannot hold someone in jail just because they are poor is expanding across the country. Mass incarceration—one way in, one way out (out of sight, out of mind) is no longer acceptable. Our justice system often does not work and can be unfair and inhumane. We have come to understand the overlay of race and poverty on the criminal justice system.

From Bernie Sanders to the Koch brothers, there is a new consensus that mass incarceration is self-defeating for our society.

We need the same energy for access to justice on the civil side as on the criminal side, and we need to bring civil and criminal justice together in one continuum. All of those who participated in the A2J Summit have done such great things. Many of us come from different disciplines and perspectives, yet there are so many commonalities. Our questions are important ones:

- What is being done and what needs to be done?
- What needs to change and how can we each contribute?
- What are our goals? And how do we get there?
- How can we collaborate, while we still go on with our own individual work?

We need to seize the moment on access to justice. We need to marshal our collective energy, strength, creativity, and intellect. The A2J Summit is a step. Now, we must organize additional gatherings and, most importantly, we must take concrete actions to ensure that we band together, so that the ideal of equal justice becomes a reality each and every day in this great country, and so that everybody gets their day in court and everyone gets justice. With our community, together, this is exactly what we must make sure will happen. Together, we can and will move the mountains on access to justice.