

BUILDING A MOVEMENT: THE LESSONS OF FINES AND FEES

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I doubt we will ever experience something we (or others) would call an Access to Justice Movement in the United States. The goal is too amorphous, lacks immediacy, and doesn't resonate: If people don't perceive that many of their problems have a legal solution, why would they rally to support "100 percent access to effective assistance for essential civil legal needs"?¹ The legal system is too big, too complicated, and too removed from people's everyday experiences. And especially in low-income communities of color, distrust of the justice system runs deep. People don't want access to a system they believe is unjust.

That is not to say, that we can't make substantial progress toward a legal system where rights and responsibilities are equitably enforced, disputes are fairly resolved, and public safety is truly secured. But I believe it will come from issue-specific campaigns that grow out of people's critical needs—needs they articulate.

The effort to reform fines and fees—still in its infancy—provides a lens through which to assess what may convert an issue from a problem many in the advocacy community recognize to an issue that angers and motivates impacted people, gains traction in the media, penetrates public consciousness, and results in meaningful and sustained reform. Several elements have been essential. First, fines and fees are a problem millions of people painfully experience, and the connection to the legal system is obvious. In state and local courts, roughly forty-five million traffic tickets are issued annually, and thirteen million misdemeanors and between three and four million felonies are prosecuted. In virtually all of those cases, fines and fees are assessed. The imposition and enforcement of these monetary sanctions hurt individuals, families, and communities by extracting millions of dollars from people who can least afford to pay and condemning people to a cycle of punishment and poverty when they cannot afford to pay. Because those monetary sanctions are collected by the court itself or by a collection agency identified with the court, people believe that the justice system is to blame.

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1. NAT'L CTR. FOR STATE COURTS, JUSTICE FOR ALL (2016).

Second, though fines and fees reform is part of the larger criminal-justice-reform movement, it tackles only one aspect of a larger systemic problem. Fines and fees are inextricably linked to—and allow us to talk about—racial and economic disparities in the justice system, over-criminalization, bail reform, mass incarceration and supervision, felony disenfranchisement, and indigent defense; but we focus exclusively on fixing fines and fees. It is a manageable and discrete piece of a larger constellation of problems.

Third, advocacy pioneers identified, researched, and began working to solve the problem before it became a headline. Their work ensured that when a catalyzing event occurred, there was a foundation of thought and action to build on.

Fourth, there was a galvanizing event that captured public attention. Most people first learned about fines and fees from Ferguson—after Michael Brown was killed, the community exploded and the Justice Department investigated. All three of those elements were important. Something horrible happened, the community protested loudly and forcefully, and a credible source validated and explained their outrage. Much as I wish that neither the first nor the last steps were necessary, it would be naive to suggest otherwise.

Fifth, advocates and activists seized the opportunity that Ferguson provided. We worked with and engaged affected communities and centered our work around what harms people most. And, critically, we coalesced around both the specific targets of immediate advocacy—debtor’s prisons and driver’s license suspensions—and a longer-term goal—eliminating fees and making fines proportionate to the offense and the individual. Litigation was filed; bills were lobbied; court rules were changed; conferences were held; funders were engaged.

Finally, we have tried consciously to engage non-traditional allies. We have made the case—with some success—that the current fines and fees regime is harmful not just to the people and communities of color that are directly impacted, but also to the larger community. We talk about jobs lost from driver’s license suspensions, for example, and how that reduces GDP locally. We talk about how hard it is for businesses to recruit and retain workers if those workers can’t reliably get to work. And we accept allies of any and all persuasions from across the political spectrum—even those whose other policy positions we may strongly oppose.

The problems that limit access to justice share many of the same attributes as fines and fees, and much, if not more, of the same groundwork has been laid, but it’s been done in service of the larger aim—access to justice—rather than with respect to particular and concrete issues. Millions of people throughout the United States experience eviction, civil debt collection, school discipline, or are denied government benefits, all of us which are profoundly harmful to individuals, families, and communities.

A single mom evicted from an apartment that has only sporadic heat and hot water, leaks when it rains, and is home to cockroaches and rodents doesn’t think she needs a lawyer, but she certainly understands that she needs a habitable and affordable house. We know that she, and the country, need

both. We need to engage with housing advocates and make access to justice part of the campaign to secure affordable housing. We can't predict a Ferguson in the housing arena, but we can be prepared when, for example, a legal aid office uncovers the fact that a slumlord has evicted dozens of tenants. We need to build relationships with tenant organizations who work on the ground in communities who can demand change; we need to develop allies in city attorney, county prosecutor, or state attorney general offices who can investigate, report, or even prosecute cases; we need to cultivate relationships with reporters who will cover the story; and we can't let it stay an isolated example. We need to link evictions in Los Angeles to evictions on Long Island and talk about why a successful housing policy will need to be enforced in an administrative or judicial system that requires access.

Indeed, the links between access to justice and fines and fees reform are present, and they can and should be more fully explored. Many fines and fees are imposed in traffic and low-level misdemeanor cases where counsel is rarely present and neither constitutionally nor statutorily guaranteed. Those of us in the fines and fees movement could learn so much from the access to justice community about how best to provide information or self-help materials so that people know to ask for a reduction or waiver of their fines and fees, a reasonable payment plan, or an alternative to a monetary sanction. And we could help ensure that there are adequate resources available and that sufficient attention is given to access to justice principles. Similarly, when court debt is enforced, it is often a civil contempt proceeding where civil lawyers can and should be representing people but rarely are. We should work together to try to address this gap. Perhaps if we apply the lessons we have learned in fines and fees along with the lessons learned in access to justice, we could serve as a model for how to bake access to justice issues into more specific policy reforms. Let's try.