

# University of Colorado Law Review

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Volume 89  
Issue 2 *Annual John Paul Stevens Lecture*

Article 3

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Spring 2018

## Changing the Dialogue on Access to Justice

Chief Judge Jonathan Lippman

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### Recommended Citation

Chief Judge Jonathan Lippman, *Changing the Dialogue on Access to Justice*, 89 U. COLO. L. REV. 325 (2018).

Available at: <https://scholar.law.colorado.edu/lawreview/vol89/iss2/3>

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UNIVERSITY OF  
**COLORADO LAW REVIEW**

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*Volume 89, Issue 2*

2018

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**CHANGING THE DIALOGUE ON ACCESS  
TO JUSTICE**

CHIEF JUDGE JONATHAN LIPPMAN\*

Annual Stevens Lecture  
University of Colorado Law School  
September 26, 2017†

Thank you Professor Hart, Dean Anaya and the University of Colorado Law School for inviting me to give the Sixth Annual John Paul Stevens Lecture. To give a lecture sponsored by this distinguished Law School and named after Justice Stevens is humbling to say the least. I also feel so privileged to be in the company of the Justices of the United States Supreme Court who have previously given this lecture, including my friend Sonia Sotomayor, your 2016 speaker.

I want to talk to you today about moving the goalposts on access to justice in Colorado, in New York and all across this nation. Access to justice is the one issue that goes to the very viability of the justice system. Let me start by saying that I am a great admirer of your Access to Justice Commission, the Colorado Bar Association and your wonderful Supreme Court, all of whom have contributed mightily to the significant strides made here in Colorado on access to justice issues in support of

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\* Former Chief Judge of New York and Chief Judge of the New York Court of Appeals. Judge Lippman gave this address for the Sixth Annual John Paul Stevens Lecture, which brings an esteemed jurist to address the University of Colorado Law School on issues central to the judiciary. Chief Judge Lippman gave this lecture on September 26, 2017.

† Editor's note: These remarks, delivered as the Sixth Annual John Paul Stevens Lecture, were adapted from an essay that was prepared for and published by the *Cardozo Law Review*. For more detailed citations and sources, please see Judge Jonathan Lippman, *Shifting the Landscape on Access to Justice*, 38 *CARDOZO L. REV.* 1159 (2017). Citations specific to Colorado have been provided.

the “in the trenches” work done by Colorado Legal Services and the Colorado Legal Aid Foundation and so many others.

In speaking to you this evening about access to justice, I would also make clear that I have been very much an advocate of judicial leaders playing a strong proactive role on access issues and reform of the justice system. The system fails unless everybody, no matter the color of their skin or the amount of dollars in their pocket, gets their day in court. In the words of the great Learned Hand, “If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.”<sup>1</sup>

A few years ago, the *New York Times* credited me with the national quote of the day, when I said that state courts “are the emergency room for society[’s]” ailments.<sup>2</sup> All of the societal issues of the day ultimately find their way into the courts and, as an institution, the judiciary must be engaged in removing the barriers that confront those who seek access to our courts to resolve their most pressing problems.

For too long, access has been limited to those with the financial resources to afford quality legal representation, while those without money or political power are left to fend for themselves. From the perspective not of an activist judge—you know, that has certain connotations—but as a judge who is, I hope and believe, proactive in the pursuit of justice, it has been my focus to change the dialogue on access to justice so that we can better serve the disadvantaged, the vulnerable, and those who just need a helping hand. Changing the dialogue is, above all else, about ensuring that the scales of lady justice are exquisitely balanced. The pursuit of justice for all should and must be our mission, and we are all the essential players in this endeavor.

To me, the greatest threat to the pursuit of justice today is the desperate need for legal services by the poor and people of modest means. Whether it be the plight of the homeless in Colorado Springs, victims of domestic violence in Denver or people whose homes are being foreclosed on in Pueblo, or similar happenings in New York or around the country—in red

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1. Judge Learned Hand, Keynote Address at the Legal Aid Society’s 75<sup>th</sup> Anniversary (Feb. 16, 1951), <http://www.legal-aid.org/en/las/thoushaltnotrationjustice.aspx> [<https://perma.cc/Z7BP-QUD5>].

2. See Jonathan Lippman, *Quotation of the Day*, N.Y. TIMES, Dec. 28, 2009, at A3.

states and blue, in cities and rural areas alike—there are so many human beings who are desperately fighting for the necessities of life. They are struggling to keep the roof over their heads and to protect their physical safety, their livelihoods, and the well-being of their families. They are literally falling off the proverbial cliff because they cannot get, they cannot afford, legal representation.

There is a huge justice gap that exists between the desperate need for legal services by the poor and people of modest means, and the finite legal resources that are available. We have made great strides over the last years, and Colorado should be proud that it is in the upper ranks in the new composite Access to Justice Index put out by the National Center for Access to Justice.<sup>3</sup> Yet the justice gap still manifests itself in so many different ways, as witnessed by the fact that in my home state there were 1.8 million people who came into the courts last year who were unrepresented by a lawyer and, here in Colorado, more than 50 percent of all civil litigants are unrepresented and 76 percent of parties in domestic relations cases are without lawyers.<sup>4</sup>

In the heart of the fiscal crisis, the Legal Aid Society, in New York City, the oldest legal services entity in the country, turned away eight of nine people who came to them seeking legal assistance. Today, legal services organizations around the country and here in Colorado still turn away more people than they can help—and no wonder, when Colorado Legal Services has 47 lawyers to service an indigent population of more than 880,000 persons<sup>5</sup>—with the state in the bottom five in the country when it comes to state funding for legal aid services.

The poverty rate hovers at around 20 percent in so much of the country, and at about that level for minorities here in Colorado, and at almost 15 percent for children in this state. The Legal Services Corporation (LSC) in Washington, D.C. is under attack, with the administration trying to zero out its funding. LSC will consider itself lucky if it can keep the very

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3. *Composite Index, The Justice Index*, NAT'L CTR. FOR ACCESS TO JUSTICE, <http://justiceindex.org/2016-findings/findings/> (last visited Feb. 2, 2018) [<https://perma.cc/DB7V-X77X>].

4. COLO. ACCESS TO JUSTICE COMM'N, JUSTICE CRISIS IN COLORADO 2014: REPORT ON CIVIL LEGAL NEEDS IN COLORADO 6 (2014), <http://www.coloradojustice.org/portals/16/repository/ATJHearingFullReport.pdf> [<https://perma.cc/5Z42-CHGM>].

5. *Id.* at 10.

limited resources that it has—which provides over \$4 million annually to Colorado Legal Services.<sup>6</sup> IOLTA [Interest on Lawyers Trust Accounts], or IOLA, as we call it in New York, which gives money to legal services based on lawyers' fiduciary accounts has seen its revenues drop dramatically because of low interest rates—from \$36 million to \$6 million in one year—and COLTAF [Colorado Lawyer Trust Account Foundation] here in Colorado has seen its funding for civil legal aid drop 60 percent from what it provided at its peak in 2008–2009.<sup>7</sup>

What is required to meet this kind of crisis and the issues that we face today is leadership, partnerships and innovation, on the part of the judiciary, on the part of the bar, from the biggest firms to the smallest practitioners, from the academy and the law school community, and of course from the workers in the vineyards—our legal service providers.

When I first became Chief Judge in New York in 2009, I testified at a hearing before a joint legislative committee on the long-range plan for civil legal services in New York. What became clear to me in the course of that testimony was that there not only was no long range plan for legal services in our state, but no short range plan and, in reality, no plan at all.

In my role as the steward of the justice system in New York, I decided to attack this issue head-on as the centerpiece and focus of my years as Chief Judge. I want to talk to you today about the lessons we learned in New York in seeking to close the justice gap, to the extent that is instructive. I also would like to address what is going on here and around the country and what we all have to do to make the concept of justice for all real and tangible for each and every person, in Colorado, in New York and across the nation.

The first thing that we did in New York to try to change the equation on access to justice, was to put together a task force to enhance civil legal services that we now call the New York State Permanent Commission on Access to Justice. The Commission is very much the counterpart to the Colorado Access to Justice Commission which was established here in 2003, one of the first in the country.<sup>8</sup> The one rule that I set out

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6. *Program Profile, Colorado Legal Services*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/program-profile?RNO=706060> (last visited Feb. 2, 2018) [<https://perma.cc/9V62-NEK6>].

7. COLO. ACCESS TO JUSTICE COMM'N, *supra* note 4, at 14.

8. *About*, COLO. ACCESS TO JUSTICE COMM'N, <http://www.coloradojustice>.

to the Commission in New York and to our chair, Helaine Barnett, the former president of the LSC in Washington and to its thirty some odd members—was that this was not going to be an arm’s length relationship, but a partnership where we had a basic understanding. The court system, its Deputy Chief Administrative Judge for Access to Justice, and the Commission would collaborate from day one before any reports or suggestions were issued, and we would have the closest of relationships. Based on our discussions, I would do absolutely everything that the Commission recommended. It was incestuous to say the least, and to the end I followed through on every single item on the Commission’s to do list.

In my mind, access to justice commissions like here in Colorado and the one in New York, where we have representation from the bench, bar, business and labor and legal service providers, cannot be divorced from the leadership of the judiciary and the profession, if they are to be effective and avoid putting out recommendations that sit on the library shelf with nothing getting done. There has to be a recognition that this is a partnership and that certainly appears to be the case here in Colorado.

We also decided that we would focus on two pillars in our efforts to support civil legal services in our state. The first of the two pillars was public funding for legal services, which when I started as the Chief Judge in 2009, was essentially zero. We had a few dollars in what we call member items from the legislature, but no systemic public funding. So, we committed to focus on public monies to support legal services, and determined that the other pillar of our program would be, and remains, increasing pro bono work by the bar.

At the outset, we decided to reach out to the public and to our various constituencies to get their support, through public hearings over which the leadership of the judiciary and the profession would preside. Each year, with support from our Access to Justice Commission, I personally presided along with the State Bar President over four hearings throughout the state to promote legal services, to make a record, and to get the facts. I am so pleased to see that the Access to Justice Commission has held similar hearings here in Colorado.<sup>9</sup>

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org/About (last visited Jan. 25, 2018) [<https://perma.cc/U4VN-4WJX>].

9. See COLO. ACCESS TO JUSTICE COMM’N, *supra* note 4, at 5–6.

We also, at the very beginning, obtained a joint resolution from the legislature saying that the Chief Judge should hold these hearings and report back as to what resources are needed to support civil legal services for the poor in New York—and to put those needs in the judiciary budget. Rather than assert our independence, since this was our idea to begin with, that is exactly what we did—put money for legal services right smack in the middle of the judiciary budget!

My belief and my instinct, even at this earlier time, was that the judiciary should be at the center of this effort, because it is our constitutional mission to foster equal justice. That's what the judiciary does, above everything else. In addition, I believe that the judiciary is uniquely positioned to play a leadership role in access to justice because of the leverage that we have and the resources that we possess. But to succeed, the bar and the law schools had to be our partners. Over time with some bumps in the road, we joined together as we all recognized that helping our fellow human beings goes to the very core of our great profession.

Another centerpiece was the realization that because of the gridlock in Washington, we could no longer be totally dependent on Washington for further funding, although we would passionately advocate for it on behalf of LSC.

We decided to look to state and local government as the primary means to fund legal services for the poor to supplement the LSC grants that New York was getting for legal services. To me, funding at the state or local level is the new horizon for public funding for legal services. That is where the average citizen comes in contact with the justice system, and legal services should in significant measure be funded locally, rather than always looking to Washington. Further, that state and local funding has to be spread out across the board over both urban and rural areas, as the latter is often neglected with legal services unable to address the geographic and logistical challenges of providing legal assistance in sparsely populated rural settings. Further, funding should not and cannot come in the form of court user fees. We cannot open access to justice with one hand and close it with the other. This is not a pay as you go business.

Remember, the LSC has \$385 million—for the entire country—to provide grants to legal services providers, including Colorado's one statewide grantee, Colorado Legal

Services. Fair to say, a small amount in the big scheme of things. In asking for state and local funding, we had to answer why the state should fund civil legal services for the poor. The approach in one respect was obvious—because it's the right thing to do. From time immemorial, as long as there have been judges and lawyers—we talk about the moral imperative for equal justice. Remember the Bible, Deuteronomy? “Justice, justice, shall you pursue, for rich and poor, high and low alike.”<sup>10</sup>

Well, we know it is the right thing, the moral thing to do. But the answer from our partners in government, if that is our only rationale, is that there are lots of right and moral things that are important. Shouldn't we help poor people? Sure, we must help poor people, but what we get if that is our exclusive argument is that this is a tough budgetary year, and we just don't have the money—get in line!

So, we took a little different approach. That approach was—and is—that it is good for the economic bottom line of our state and our communities to support legal services for the poor. If you invest money in civil legal services, more money is returned to the state with reduced social services costs, reduced incarceration costs, and more federal dollars flowing to the state. We delivered highly sophisticated economic studies done pro bono by major accounting firms and fiscal experts that showed that for every dollar invested in civil legal services, five to six dollars, or even ten dollars, are returned to the state. Colorado's own studies have shown that there is a more than six dollar return for every dollar invested.<sup>11</sup>

So, we tell our partners in government, don't just provide for legal services because you want to help the vulnerable—which you should do—but do it because it helps the well-being of our economy and our society. Everyone loses if people fall off the cliff, go on public welfare, and don't have money to put into local banks and local stores.

This is an unconventional approach, a counterintuitive approach, and you also need unconventional messengers to deliver it. Who did we have testify at these hearings? Of course, we needed clients to tell their stories as to how legal services dramatically changed their lives—by avoiding foreclosure or

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10. *Deuteronomy* 16:20.

11. COLO. ACCESS TO JUSTICE COMM'N, *supra* note 4, at 6.



eviction, by helping an emigrant fight back against a domestic violence abuser, or by getting health benefits for an AIDS patient. That is one way we were able to get the public and the press' attention. We also had the heads of the largest banks, the heads of the landlord associations, the business associations, the Comptroller of the State of New York, and the City Council Speaker testify as to what a great investment legal services for the poor was for our communities. We even had Cardinal Dolan testify. As an aside, let me tell you that it was quite a scene when Cardinal Dolan came in with his red hat and flowing red robes, and said that the message of the church was the same as the message that the Chief Judge was giving. The word from on high!

We must continue to think of new ways to get our message across. If we don't do it, no one will! Whether in New York City or Denver, you don't have people protesting in the street with placards saying, "More money for legal services for the poor." It's not that kind of an issue. We in the profession have to stand for something, and advocating for legal representation for the most vulnerable in society is our most fundamental obligation. We are not here just to feather our own nest.

Lesson in point. At the beginning of my tenure as the Chief Judge, the Governor and the legislature cut \$170 million from the judiciary budget—a great deal of money, by any standard, even in a state as large as New York. A budget cut of that size necessarily required layoffs of court personnel. At the same time, I had pledged to give millions of dollars to legal services for the poor in the judiciary budget. The other two branches of government asked how can you lay people off and possibly close the doors of the courthouses, at the same time that you're giving money to legal service organizations that are representing poor people? The answer I gave was that if we keep the courthouse doors open and don't have equal justice inside, then we might as well close the doors! In those circumstances, justice does not mean anything.

So we gave the monies to legal service providers, and we did what we had to do and laid off court personnel, most of whom I am pleased to say were able to return to the court system within a reasonable period of time. We agonized about this choice, and in the end made our point—that the judiciary and the profession believed that access to justice for all was the very foundation of the courts and the justice system.

From that moment on, we didn't have a day's trouble in funding legal services for the poor in the judiciary budget. We went from \$12.5 million to \$85 million in six years. Then with my last year's budget, to \$100 million—which was the goal we had originally set. We believe that we have institutionalized that kind of funding at the state level, beyond what New York legal service providers receive from federal or other sources. In New York today, between state and local funding—including funds that New York City provides—we have over \$200 million, more than half the funding the LSC has for the entire country to support legal services for the poor. Public funding for legal services is essential, so that our legal service providers know that they are not alone. Providers are doing God's work, and we need to show them that we are right there to support them.

Clearly, it is great to have public funding. However, make no mistake, it is the tip of the iceberg. We still turn away more people than we can help. There's not enough public money in the world to meet the need. More has to be done, and it has to come from the voluntary pro bono efforts of the bar to fill that gap. We have to appeal to the nobility of the bar. We need to get more soldiers in the field to help the legal service providers by doing pro bono work. In New York, we first looked to parts of the bar that were relatively untapped when it came to pro bono work.

First, we had the baby boomers—who were slowing down their practices. We told them if they do a certain amount of pro bono work for the poor, we would single them out for recognition and call them Lawyers Emeritus. We now have more than 2,000 of these baby boomer lawyers who are doing pro bono work in the Emeritus Program. An analogous idea is your Pro Bono Recognition Program that recognizes firms who pledge over fifty hours of pro bono work per attorney in the firm.<sup>12</sup>

We also talked to corporate counsel—those corporate counsel that come from other states, working for corporations in New York. We changed our rules to allow them to do pro bono work here even if they were not admitted to the bar. The bottom line—if you are representing poor people for no fee, you can practice in the courts of the state of New York, whether

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12. COLO. ACCESS TO JUSTICE COMM'N, *supra* note 4, at 21–22.

admitted or not.

Then we went to aspiring lawyers and legal educators and announced that we were going to impose a fifty-hour pro bono requirement on all law students who want to become admitted lawyers in New York. The theory is that if you're not going to embrace the core values of our profession, which are about helping others, serving others, then you're not going to be a lawyer in New York.

You would have thought that the world was coming to an end when we announced this. Some law schools, like the University of Colorado's Experiential Learning Program, commit students to at least fifty hours of pro bono work before graduation,<sup>13</sup> and other schools require community service or a certain number of clinic hours. However, in New York this was a licensing requirement in order to have the privilege of practicing law in our state. New York law schools were not crazy about the idea, although, they quickly realized the benefits to the souls, to the DNA of new lawyers and supported our efforts.

The main opposition came from the organized bar that said that this was the nose under the tent for mandatory pro bono for all lawyers. While this was not the case, as Seinfeld would say: "Not that there's anything wrong with it." If every lawyer in the State of New York, Colorado or the country gave fifty or 100 hours of pro bono work, would that be a terrible thing? I don't think so!

The bottom line is that the people who really got it, who really understood what we were doing, were the students. The students embraced it immediately, and they did not stop at fifty hours. When they start getting into pro bono work, they love it, and they do much more than they're required to do.

We followed up the fifty-hour initiative with the Pro Bono Scholars and Poverty Justice Solutions Fellows programs, where law students devoted their last term of law school solely to pro bono and entered into two year fellowships with legal service providers after graduation. We found that the appetite among law students for pro bono work was insatiable once they achieved the great satisfaction that comes from helping people

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13. *Public Service Pledge*, COLO. LAW, <https://www.colorado.edu/law/academics/experiential-learning/public-service-pledge> (last visited Feb. 2, 2018) [<https://perma.cc/KB9S-44NH>]

in need.

My view is that if we require law students to learn about torts, and contracts, and property, we should also require them to learn about values. It is not enough to teach the different disciplines that you learn about in law school. Interwoven with that has to be learning what being a lawyer is all about, helping others. You can't live in a vacuum, whether you become a corporate lawyer, or a torts lawyer, or a legal services lawyer. All lawyers, no matter what they do, should know that lawyering in a real way is a public service—*pro bono publico*, working for the public good!

We survived all of that, and then there came another crisis in changing the dialogue on access to justice in New York—another crisis with the organized bar. We asked lawyers to report on their attorney registration how many hours of pro bono work they did and how much they financially contribute to legal services providers. We did this to help us chart our future course on access to justice. Our efforts with the bar to create a voluntary reporting system, as has been discussed in Colorado, was not producing results. As a result, we made it mandatory because we cannot know what to do on access issues unless we know how we're doing—the information was essential to fostering access to justice in our state. Again, the response of many in the bar was the nose under the tent argument.

Our rationale was similar as for the fifty-hour rule. The judiciary, the Chief Judge, in my case, is not only the gatekeeper for bar admission, but also the legal regulator of the profession. Our job as the legal regulator is not to see to it that all lawyers make a lot of money and have two cars in the garage. No! Our job is to make sure that the public has trust and confidence in this profession, and that the profession aspires to the highest moral and ethical precepts.

I did not take a vote and ask the bar if they thought it was a good idea that we require them to tell us how many hours of pro bono work they do. The vote surely would have been a resounding "No." Rather, I believed that this was a critical, ethical issue for our profession that required leadership by the judiciary as the legal regulator. The end result of that was that we were able to get the best system of pro bono reporting in the country among the nine states that now have a mandatory system. After we exercised moral leadership on this issue, and

after the recriminations back and forth, we reasoned together with the bar and came to an understanding to develop a very expansive, but not unnecessarily intrusive system of required pro bono reporting to be filed along with the attorney's biennial attorney registration form. We now have the information we need by geographic area, big firm, little firm and specialties. We are going to know where we need to do more, and where lawyers are doing their part, and no one is complaining about it.

What other things should we be thinking about to change the landscape on access to justice? One thing is to identify in the everyday practices and protocols of the courts and the profession what needs to be done to even the playing field. What we did in the judiciary in this regard, as the rule-maker, was to put out new rules for foreclosure and consumer credit cases. What was happening in foreclosure cases? Remember the robo-signings, where lawyers were getting robo-signed foreclosures while representing the banks, but often really had no idea what the case was about.

We made the lawyers put in affidavits saying that they were personally familiar with the case. And surprise of surprise, foreclosures dropped over 50 percent in New York. Why? Because lawyers didn't want to attest falsely that they knew the facts of the case.

We did the same thing with consumer credit cases, addressing where the consumer credit entities buy up the credit card bills—for pennies on the dollar—and then put in some broad-brush affidavit that says that an unsuspecting defendant owes \$5,000 or \$20,000 or more. What we did is say that they needed to give us the trail of the debt. Who has owned it, who owns it now, what is the history, what is the exact amount. We require this information before we grant a default judgment over some poor person who may or may not get notice and, if it is received, has no idea what to do with it. We want to make sure that there is notice, and that the courts and the defendant get all the particulars about the debt.

Although these new court rules did help our access to justice efforts, we were determined to continue to think out of the box and be innovative in finding new ways to deliver legal services to disadvantaged New Yorkers. We had a seemingly insoluble problem in New York. We concluded that there were just not enough lawyers doing pro bono work to make sure that

people get legal representation. What to do?

We looked around and found that civil legal services in Great Britain are done, for the most part, by non-lawyers. This was intriguing to us. Obviously, the best solution is to have a lawyer to promote access. We concluded, however, that the next best solution is to have a non-lawyer trained in a particular niche who might even be more effective than a generalist lawyer who doesn't know about the particular area.

So, we started the Navigator program, which I am so delighted is being piloted and possibly expanded here in Colorado, where non-lawyers go into the courtroom with the litigant, particularly in housing and consumer credit cases. They can answer questions from the judge, and provide moral support to the litigant. Then we took it a step further to the street level. We opened storefronts of non-lawyers, called Legal Hand, supervised by legal service attorneys. These storefronts are in communities that are changing, and non-lawyers provide legal assistance and information. The bar looked at what we were doing, and thought it was a good idea—because we were not taking the bread out of any lawyer's mouth. In these kinds of cases, the great bulk of the people are unrepresented.

But, what does all of this add up to? I've tried to give you an overview of some of the things we've done to change the paradigm on access to justice—the funding, increasing pro bono, stressing values and the nobility of what we do, new rules, new ideas, and the use of non-lawyers. In addition, there are so many other things to be done with technology and access to justice portals, unbundling of legal services, lawyers for a day programs, court help websites, training of Judges and court personnel, do-it-yourself forms and so much more.

Look at all you've done here in Colorado—self-represented litigation coordinators or Sherlocks, virtual pro se clinics, the Legal Help Center, fillable forms, the Navigator program, judicial training on assisting self-represented litigants without violating neutrality, rules changes to encourage limited scope representation, the Pro Bono Recognition Program, the Modest Means Task Force, CLE credit for Pro Bono, removing language barriers by increasing access to interpreters, the work on the Justice for All grant, and on and on.<sup>14</sup> Truly impressive!

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14. See COLO. ACCESS TO JUSTICE COMM'N, *supra* note 4, at 17–22.

None of us has a monopoly on innovative ideas on Access to Justice. California has a pilot Civil Gideon program. Connecticut has a Lawyer Corps program where the big corporations fund fellows to provide civil legal services. The State of Washington has a low-bono legal technician program. New Jersey has done so much with foreclosures. Texas has line items in the executive budget supporting legal services for the poor. And so much more. Each state is its own laboratory of innovation, and we learn from one another.

There are lots of interesting, innovative things happening here in Colorado, in New York and around the United States. How do they fit together? To me, in one fashion or another, we are going toward some kind of a right to counsel or a Civil *Gideon*—or, if you prefer, 100% access to justice—meaning, in my mind, legal representation, or at the very least, effective legal assistance for every person in need. But, how do you actually get there? There are three obvious ways—by policy, by statute, or by Constitution.

If you look at the most recent Supreme Court cases on a constitutional right to counsel in civil matters—*Turner v. Rogers*, for example<sup>15</sup>—I would not count on a constitutional right in the near future. We need more time. What about by statute? It's possible. There are right to counsel bills in cities around the country that are gaining support, and New York City has just adopted a right to counsel bill for all housing matters—a landmark event! To me, the momentum for the time being is on the policy side, which is going a long way in changing how the public views access to justice issues. In New York, our legislature passed a joint resolution declaring that it is the public policy of our state to provide legal representation or effective legal assistance to everybody in need, fighting for the necessities of life.

The initiatives that you've undertaken in the Colorado judiciary and the Access to Justice Commission are, in many respects, on the policy side. The issues I talked to you about that are going on in New York and all the different and interesting things happening in other states are essentially policy based. I believe that a thousand flowers are blooming, and that we are literally changing the dialogue on access to justice and civil legal services.

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15. 564 U.S. 431 (2011).

That's what happened on the criminal side. Look at the seminal case of *Gideon v. Wainwright*, that says that everyone whose liberty is at stake is entitled to a lawyer.<sup>16</sup> It's not perfect, believe me. Criminal indigent defense representation is very uneven in the country, but at least there is a constitutional floor. If your liberty is at stake, you get a lawyer.

*Gideon* was fifty plus years ago. Twenty years before that, in *Betts v. Brady*, the Supreme Court (just like in *Turner v. Rogers* in civil cases) said that even if you're going to go to jail, you have no right to a lawyer.<sup>17</sup>

What happened in the twenty years between *Betts* and *Gideon*? The dialogue changed. And it changed as states around the country innovated and implemented many interesting policy-based things to promote criminal indigent defense representation. Innovation was about in the country and a foundation was built. That's why by the time of *Gideon*, twenty-five attorneys general in different states in the United States put in amicus briefs to the Supreme Court saying that you should have a constitutional right to a lawyer when your liberty is at stake.

The discussion had changed. The public's perception had changed. That's what happens when people are proactive in the pursuit of justice. That's what is happening on the civil side today—that's what you all are doing. I really believe that we are changing the priorities, that people are starting to understand that civil legal services for the poor are as important as schools, hospitals, and housing, and all the things that we hold dear in our society.

We're at the tipping point. I believe there's a revolution building today in access to justice. The public is getting it. The person on the street has known for many years, since *Gideon*, that if your very freedom is involved, you get a lawyer. They watch television, they know about *Miranda* rights. They know that everyone gets a lawyer, if you may wind up going to jail.

But what about if you asked, a few years ago, what would happen if your home was being foreclosed on, or you were being evicted—should you get a lawyer? Until recently, a very tiny percentage would have said yes. Go out on the street today, after the foreclosure crisis and the economic crisis in the

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16. 372 U.S. 335 (1963).

17. 316 U.S. 455 (1942).



country, and all of our efforts on access to justice in civil matters, and ask people if they think someone who is getting the roof over their head taken from them should get a lawyer. I would bet that you are going to have 80 to 90 percent say, “absolutely!” All the things that you are doing here in Colorado are making that happen, and the same goes for the rest of the country.

The dialogue is changing. We really are getting to the point where we can have a right to counsel or 100% access to justice. We are building the foundation. We are shifting the landscape. Can we really close the justice gap? Without doubt, with innovation, leadership, partnerships, and being proactive in the pursuit of justice.

The judiciary, again, is uniquely suited to make this happen, as the gatekeeper for bar admission, as the legal regulator, as the rule-maker—and we have the pulpit from which to preach the gospel of access to justice. It’s our constitutional role, it is what we’re supposed to do.

The profession? We are not a parochial profession, we can’t be. We have to always remember the nobility, the values, and look at the example of the legal service providers, our heroes. Whatever we do, we must support them with pro bono work to help people.

The law schools? Our legal educators must be value-driven. Being at law school is more than learning about contract theories or the rule against perpetuities, and all the other subjects. It’s about learning what it means to be a lawyer, it’s about ethics and responsibility, so that with the next generation of lawyers we are not going to worry about mandatory pro bono and the nose under the tent. They are going to meet their obligations as lawyers because it is in their DNA, it’s what lawyers do.

Together, if we continue to think out of the box, if we are proactive in pursuing justice, if we truly are leaders in the judiciary and the profession, if law schools teach new lawyers about values, and if Access to Justice Commissions continue their ground breaking work, we can and we will make the ideal of equal justice a reality here in Colorado, in New York and around this great country.

Thank you.