



Issues of Democracy

AUGUST 2004



ACCESS TO THE COURTS

Equal Justice for All

BUREAU OF INTERNATIONAL INFORMATION PROGRAMS

U.S. DEPARTMENT OF STATE

Access to the Courts

Equal Justice for All

From the Editors

IN A PARTICIPATORY democracy, it is essential that citizens have faith in their institutions. A judiciary that is seen as fair and independent is an important component in sustaining their trust and confidence. In the early days of the nation, the drafters of the U.S. Constitution debated how best to guarantee a transparent court process and a judiciary free of political manipulation in which those accused of crimes would be given a fair trial with proper legal representation. Their discussions resulted in the Bill of Rights, the first 10 amendments to the Constitution, being adopted in 1791. The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Living up to this ideal is a challenge. It requires the involvement of many people, including educators, legislators, legal professionals, and ordinary citizens. Efforts to guarantee “equal justice for all” take many forms within the U.S. legal system. This journal describes several aspects of the ongoing process of ensuring legal protections and educating citizens of their rights and responsibilities.

American Bar Association President Robert J. Grey provides an overview of the U.S. commitment to equal access to the legal system for all citizens. Access to the courts has been redefined by court decisions to become more inclusive, going beyond the right of the poor to legal counsel to include special provisions for minors and the disabled. Mr. Grey also describes the ABA’s efforts in the United States and abroad to improve access to the courts and strengthen democracies around the world.

Andrew A. Guy, a practicing attorney in Washington State and chair of the Washington State Bar Association’s Pro Bono and Legal Aid Committee, describes the various systems for ensuring that the poor have fair representation

in court. For those accused of serious crimes, there are court-appointed attorneys, contract attorneys, and public defenders. But even when the poor need help in civil matters, there are a number of options available. Bar associations, special interest attorneys, and private law firms work together to ensure that the poor have proper representation.

Professor Peter A. Joy discusses clinical legal education programs that enable law students to provide legal assistance to persons and groups too poor to hire lawyers. Working under the supervision of law professors or other lawyers in their communities, law school clinic students learn how to practice law and solve client problems while providing access to the courts for those in need. These programs are growing in popularity because they provide practical training for students as well as needed services for citizens without resources. Professor Joy also describes efforts to set up similar programs throughout the world.

When there are problems with a system, it's important to acknowledge the issues and take steps to affect changes. Shira Goodman and Lynn Marks from the nongovernmental organization Pennsylvanians for Modern Courts describe their organization's efforts to work in coalitions with citizens, bar associations, and the state legislature to improve and reform the Pennsylvania court system.

Washington File writer Darlisa Crawford interviews Georgetown University Law Professor Richard Roe about his work in the Street Law program, which encourages individuals from all walks of life to become involved in civic legal programs. Professor Roe has taught Street Law to children, the homeless, inmates, and many other groups in the United States and around the world.

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BIBLIOGRAPHY

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Access to the Courts

Equal Justice for All

Robert J. Grey, Jr.

An impartial, independent judiciary is the guardian of individual rights in a democratic society. In order for citizens to have faith in their court system, all people must have access to the courts when necessary. The author describes how this doctrine works in practice in the United States—in criminal and civil matters—and how the U.S. legal profession contributes to making “equal justice for all” a reality. He concludes the article with examples of the American Bar Association’s efforts to improve access to justice beyond U.S. borders through its international rule of law programs.

Robert J. Grey, Jr., is president of the American Bar Association (ABA). A partner in Hunton and Williams law firm in Richmond, Virginia, Mr. Grey’s work focuses on administrative matters before state and federal agencies. He also has served as chair of the ABA House of Delegates and as a member of the Board of Governors.

IN A DEMOCRATIC SOCIETY where the governed relinquish a portion of their autonomy, the legal system is the guardian against abuses by those in positions of power. Citizens agree to limitations on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy, and that has authority over all the parties to solve the disputes peacefully. The courts in any democratic system are that place of refuge. U.S. Supreme Court Chief Justice William Howard Taft stated in 1926 that “the real practical blessing of our Bill of Rights is in its provision for fixed procedure securing a fair hearing by independent courts to each individual.”

A fundamental value in the American system of justice is that the stability of our society depends upon the ability of the people to readily obtain access to the courts, because the court system is the mechanism recognized and accepted by all to peacefully resolve disputes.



Robert J. Grey, Jr.

Denying access to the courts forces dispute resolution into other arenas and results in vigilantism and violence.

The judicial systems of the United States are structured to ensure access to the courts and equal justice under law for all citizens. The U.S. Constitution and the constitutions of all 50 states contain specific articles on the judicial branch. The judicial systems of the United States are separate, coequal branches of government that maintain autonomy through their own structures, authorities, and rules. The principle of judicial independence, reflected in the federal and state constitutions and in American legal and political history, allows judges to make decisions based on the law and the facts of each case, rather than on popular opinion or political considerations.

The judicial systems of the United States include the federal courts and separate court systems for all 50 states, the District of Columbia, and five territories. These different court systems handle approximately 100 million cases per year, with the vast majority being heard in state courts. At the federal level,

approximately 2,200 judges serve across the United States in the following capacities: justices of the Supreme Court, judges of the courts of appeals, judges of the district courts, bankruptcy judges, and magistrate judges. At the state level, approximately 31,000 judges serve on the bench, from the highest court down to local courts of limited jurisdiction.

Each state and territory has the authority to establish and operate its own court system. The structure of state court systems varies from state to state. Some states have “unified,” or simplified, systems of only two or three levels, while others have multiple levels of court for different types of cases. Judges are selected by a variety of different methods in the states, including appointment by governors, popular election, and selection by the legislature. Terms of office for state judges range from four years to lifetime tenure.

Equal Justice in Practice

When discussing the idea of access to the courts, mere access in the theoretical or legal sense is not enough; rather, it is the results that flow from the decisions made by the courts that give it meaning. For example, the value of “access” is evident when the courts decide that no one, especially those in positions of power, is above the law, or when access requires the right to counsel in cases where one’s liberty is in jeopardy.

The practical application of the fundamental right to access the courts under the U.S. Constitution has been put to the test throughout the nation’s history. It has been claimed and challenged by many. Early on, the Supreme Court established its authority over all disputes. In 1807, President Thomas Jefferson claimed executive privilege in a case against Aaron Burr, whom Jefferson accused of treason. In his defense, Burr asked the Court to issue a sub-

poena compelling Jefferson to provide his private letters concerning Burr. Jefferson refused. Chief Justice John Marshall denied the president's argument and ruled that Jefferson's claim that disclosure of the documents would imperil public safety was a matter for the Court to judge, not the president.

The issue of presidential immunity was heard again almost 200 years later. In 1974, a special prosecutor subpoenaed White House tape recordings in an effort to determine if the president had been involved in a political scandal known as Watergate. President Richard Nixon sought to have the subpoena quashed on the grounds of executive privilege. The Court ruled eight to zero that the tapes should be released, because the Court determined that no person, not even the president of the United States, is completely above the law. In the opinion that followed, Chief Justice Warren Burger wrote, "Neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."

Perhaps the importance of open access to the courts is best recognized in the criminal justice sector in cases involving the right to counsel. In the United States it has been established that, at least in criminal matters involving the loss of liberty, a person cannot be considered to have adequate access to justice unless the person is provided with legal counsel. In a landmark decision in 1963, the U.S. Supreme Court held that the U.S. Constitution requires that counsel be provided to indigent defendants in state felony proceedings (*Gideon v. Wainwright*). Subsequent decisions by the Court extended the indigent defendant's right to counsel to state juvenile delinquency proceedings, state misdemeanor proceedings in which

actual imprisonment is imposed, state misdemeanor proceedings in which a suspended jail sentence is imposed, and the first appeal to an appellate court. Additionally, the Court has held that the right to counsel first attaches at various critical stages occurring prior to trial, including custodial interrogations, line-up identifications, arraignment, preliminary hearings, and plea negotiations. The decisions are intended to protect citizens from unjust punishments.

Protecting Children and the Disabled

Equal access to the courts is not reserved for adult citizens only. Children deserve the same access to the nation's courts because they too are citizens and deserve their day in court. However, they face additional barriers. Children cannot initiate legal actions without the assistance of adults; they may not know where to turn for assistance or even that help is available; and their voices are often unheard or unnoticed. Yet improving children's access to the justice system can help strengthen families and make victims of crime more likely to disclose their victimization and to support the legal process.

The American legal system has endeavored over the past several decades to make the justice system more accessible and amenable to children and their special needs. Certain court decisions, including several by the Supreme Court, have made testifying in court easier for children. Special procedures, such as the use of closed-circuit testimony and the assistance of special child advocates, can help lessen the potential trauma to child witnesses. Child-friendly courtrooms, where the furniture is scaled down in size or where the judge does not sit high above everyone else, can help children feel more comfortable in the courtroom setting. Many jurisdictions have implemented

interdisciplinary approaches that tailor interventions on behalf of children to reduce further victimization.

More recently, disabled Americans challenged the courts themselves over meaningful access to the courts. In *Tennessee v. Lane* (2004), plaintiffs, including a paraplegic man who had to crawl up two flights of stairs to attend a hearing in a Tennessee courthouse, sued under Title II of the Americans with Disabilities Act, claiming that the physical impediments to enter the court buildings violated their rights. The American Bar Association, in its amicus brief, argued, “The courts must be a model of accessibility.” The brief went on to say, “They [courthouses] must be barrier free—and thus open to all... vital to the legitimacy of and public confidence in the administration of justice. A lack of equal access to the courts harms not only those persons who are excluded, but also the system itself.” In the majority opinion, Supreme Court Justice John Paul Stevens held that Title II was constitutional “as it applied to the class of cases implicating the fundamental right of access to the courts.” Thus, the decision forced every courthouse and public building in the United States—including the U.S. Supreme Court—to accommodate the disabled by installing entrance ramps, special elevators, hand rails, handicapped-accessible bathroom facilities, and other modifications.

The Legal Profession's Commitment

The Constitution establishes the fundamental right of access to the judicial system. The courts, as guardians of every person’s individual rights, have a special responsibility to protect and enforce the right of equal access to the judicial system. If the courts have this special responsibility but no judicial police force to enforce their rulings, why is there general com-

pliance? Two important reasons stand out: (1) public trust and confidence in the system overall, and (2) a strong commitment by the organized bar to work with the judiciary to establish and demand compliance of judicial decisions.

As president of the largest bar group in the United States, I consider it important to discuss how this second point intersects with the judiciary. If the judiciary is the guardian of the rights of the people, the organized bar and its lawyers are the foot soldiers. The legal profession and the practicing bar bear a large share of the burden. With this in mind, the American Bar Association (ABA) has established 11 goals to be pursued in its quest of “Defending Liberty and Pursuing Justice.” The second of these goals is “To promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition.”

It was in defense of this goal that the ABA submitted its amicus brief on behalf of disabled Americans in *Tennessee v. Lane*. When the Watergate scandal broke, Chesterfield Smith, then president of the ABA, issued a press release that stated “no man is above the law,” a quote that later appeared in all major U.S. newspapers. Subsequently, the ABA House of Delegates—composed of 474 legal representatives from all 50 states and the U.S. territories—voted unanimously against granting legal immunity to President Nixon.

The organized bar has long recognized that it must speak out for the judiciary when it cannot speak out for itself. This is especially true during ongoing litigations, for example, when the press criticizes a judge’s ruling, and because of the confidentiality of an ongoing case, the judge cannot explain his or her actions personally. The press may react by questioning not only the actions of the judge but his or her apparent unwillingness to respond. The orga-



CEELI Staff Attorney Irina Lortkipanidze and USAID Rule of Law Advisor Robert Bayer unseal the answers to Georgia's first-ever bar examination. (Tbilisi, November 2003)

nized bar is also in a position to help the public better understand the proceedings and the reasoning behind judges' rulings in an effort to inspire public confidence and generate thoughtful public debate.

The bar also works hard to provide trained advocates or counsel in civil matters. Though the right to counsel has been established in criminal cases, it is not guaranteed in civil matters. Nevertheless, since the 1870s the ABA has been involved in efforts to provide free legal services for poor persons. The ABA actively campaigned for the formation of legal aid organizations throughout the nation because its members understand that, among other things, courts run more efficiently when litigants appear with a lawyer. It saves time, prevents error, and ensures that justice is done.

International Outreach

The ABA's efforts to improve access to justice do not end at U.S. borders. Through its international rule of law programs, the ABA engages in

a myriad of projects that support efforts abroad to give citizens a voice and stake in the justice system in their respective nations. Throughout Central Europe, Eurasia, Africa, Asia, the Middle East, Latin America, and the Caribbean, ABA rule of law activities support local efforts to improve access to justice by developing legal aid and public defender programs, improving case administration, developing clinical legal education initiatives representing indigent clients, and implementing court outreach programs that educate the public about the judicial system, their rights, and responsibilities. For example:

- In Uzbekistan, ABA-sponsored public defender centers provide much-needed legal services to indigent criminal defendants.
- In countries such as Ukraine, Moldova, Azerbaijan, and Russia, the ABA trains and supports local lawyers to advance housing rights, address environmental degradation, and combat domestic violence.

○ From Croatia and Romania to the Central Asian states of Uzbekistan, Kyrgyzstan, and Kazakhstan, the ABA has implemented programs that help courts explain their activities to the media and general public and to educate citizens about the justice system and their rights.

○ In Rwanda, the ABA supports legal aid and access to justice for women and children living with HIV/AIDS.

○ In Kenya, Tanzania, and Uganda, the ABA supports the enforcement of women's and children's rights to land and protection against sexual crimes.

○ In China, the ABA has provided assistance that has supported the development of new regulations providing for greater access to clients by lawyers and pretrial disclosure of evidence between prosecution and defense.

The ABA also has supported a Chinese legal aid center in developing and distributing a basic "know your rights" brochure to citizens who otherwise have little information about the legal system and their rights in it.

○ In Cambodia, the ABA is working to increase the capacity of Khmer legal and human rights professionals to provide legal services to the oppressed and to bring "impact" litigation on behalf of the public.

○ In Mexico, the ABA works closely with the supreme courts of more than 20 states to provide court-annexed mediation services in civil matters. The project serves as a catalyst for an unstoppable movement in Mexico to provide alternative dispute resolution methods to its citizens. In doing so, it has opened access to the courts to a disadvantaged class previously unable to afford lawyers or formal litigation.

○ In Ecuador, the ABA is collaborating with government and nongovernmental authorities to curtail trafficking in persons, particularly women, children, and adolescents, for commer-

cial sexual exploitation. Trafficked victims—typically poor women and children—are among the most vulnerable in society and seek refuge in the courts. The ABA, in conjunction with the Supreme Court of Ecuador and the National Council of the Judiciary, held a nationwide meeting to bring together the leading institutions working to combat trafficking in that country. There is now a call for a national plan to combat trafficking in persons.

Real and meaningful access to the courts is fundamental to the health and vitality of any democracy. It is the shield used by citizens to protect themselves against tyranny, abuses, and simple errors in judgment. Access to the courts is the lifeblood of the system because from it flow all other rights. It helps preserve order when conflict arises and keeps citizens actively participating in the proper use of their collective power.

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Photograph, page 10: Courtesy American Bar Association Central European and Eurasian Law Initiative (CEELI)

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Pro Bono Representation

Providing Counsel Where It's Needed

Andrew A. Guy

The U.S. Constitution guarantees the right to counsel to those accused of criminal acts, and for several decades courts have been required to provide legal representation to those who cannot afford to hire their own attorneys. Parties in civil lawsuits have no such guarantee; however, civic and legal organizations, as well as the federal government, have made legal representation available to low-income persons through a variety of mechanisms. The author outlines the public defender system used in criminal cases and discusses efforts made to provide counsel for parties in civil cases.

Andrew A. Guy is chair of the Pro Bono and Legal Aid Committee of the Washington State Bar Association. He also serves as chair of the advisory board of the Seattle University School of Law's Access to Justice Program, as a board member of Washington Attorneys Assisting Community Organizations, and as a member of the Community Legal Services Committee of the King County (Washington) Bar Association. As a partner in the Seattle, Washington, office of Stoel Rives LLP, he litigates commercial, real estate, and bankruptcy cases and is a member of the firm's Business Finance & Insolvency Practice Group and its Trial Practice Group.

THE UNITED STATES views itself as a society organized on principles of law. It adopts the democratic philosophy that those laws should be applied equally to all persons who come before its courts, regardless of wealth, family history, and social position, as well as gender, race, religion, national origin, ancestry, and many other personal distinctions that are irrelevant to the determination of the legal issues before the court. Creating and maintaining a system designed to provide fair and even application of laws to all persons is very important if the justice system is going to have credibility and be perceived as a system that represents the United States' democratic ideals.

As reflected in the well-known phrase "justice is blind," we expect courts and the judges who hear cases to disregard such irrelevant personal characteristics as wealth and to apply legal principles based on the merits of the case, rather than the identity of the parties before the court.

However, even when the substantive law is not skewed in favor of the wealthy and when judges in good faith apply the law fairly to the



Andrew A. Guy

cases before them, those who cannot afford to hire a lawyer to represent them face a serious problem. Given the complexity of the law today, an unrepresented person appearing in court with an adversary who has legal representation is at a distinct disadvantage.

In *Justice and the Poor* (1919), Reginald Heber Smith argued that the effects of denying justice to people who cannot afford a lawyer produces a sense of helplessness, which progresses to bitterness and then to contempt for law, disloyalty to the government, and anarchy. The concern is that the poor will come to view the justice system as containing only laws that punish and never laws that help them, and to believe that there is one law for the rich and another for the poor. For these reasons, as well as from a sense of justice and fairness, many legislators, judges, lawyers, advocates for low-income persons, charitable organizations, and others have attempted to put into place programs designed to assist low-income persons obtain legal representation when they need it.

In the United States, the issue of whether or how to provide free legal representation to the poor has been approached differently in two distinct contexts: (1) criminal cases having penalties involving potential jail time or death, and (2) other kinds of criminal cases and all civil cases. Criminal cases are those in which

the government (federal, state, or local) charges a person with violation of a criminal statute or code. Examples are prosecutions for murder, rape, kidnapping, assault, theft, burglary, arson, and so forth. Civil cases are, generally speaking, all matters that are not criminal in nature. Examples are divorce proceedings, actions for breach of contract or breach of lease, probate proceedings, negligence cases, and property disputes.

Right to Representation in Criminal Cases

In the United States, the right to have assistance of an attorney in a criminal proceeding has been a constitutional protection since the Bill of Rights (the first 10 amendments to the U.S. Constitution) was adopted in 1791. The Sixth Amendment to the Constitution provides, in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to...have the Assistance of Counsel for his defence.”

At the time the Sixth Amendment was enacted, the right to assistance of counsel did not mean the right to free counsel appointed by the court or provided by the government. However, in *Johnson v. Zerbst* (1938), the U.S. Supreme Court held that the Sixth Amendment entitles a person charged with a federal crime to appointed counsel if the person cannot afford to hire an attorney. In 1963, the Supreme Court applied the same rule to criminal prosecutions brought by the states or subdivisions of the states, in felony cases where, if convicted, the defendant could be deprived of life or liberty (*Gideon v. Wainwright*).

Providing Free Legal Services

More than 170 years elapsed between the adoption of the Sixth Amendment and the time it was construed to require the government to provide a free attorney for indigent criminal defendants. One obvious reason for delay in reaching this

conclusion is the cost of financing such representation. Unlike other constitutional procedural protections in criminal matters, such as the rights to remain silent and avoid self-incrimination under the Fifth Amendment or the protection against unreasonable searches and seizures under the Fourth Amendment, the right to appointed counsel costs money.

The Supreme Court did not provide guidance for implementing its decision, so the federal, state, and local governments had to develop systems to do so, using public funds. As a result, the public defense system has grown and evolved over time. Today there are four primary models for providing representation for indigent defendants, as outlined in “Keeping Gideon’s Promise” by Charles J. Ogletree, Jr., and Yoav Sapir (*New York University Review of Law and Social Change*, 2004). They are:

Assigned Counsel: Under this approach, lawyers from private firms are appointed to represent criminal defendants in particular proceedings. This is sometimes done on a case-by-case basis, informally or through a rotation system, using lists of lawyers who have expressed willingness to serve as counsel for the poor. The attorneys’ fees usually are paid by the state or the county, and fees vary according to the type of case, number and type of court hearings, number of hours worked, and other variables.

Contract Counsel: The contract method also relies primarily on private attorneys to represent poor criminal defendants. In this system, the state or county enters into contracts with attorneys who agree to handle specified types of cases for a particular time period.

Public Defender Systems: Public defender systems generally involve funding full-time employees at a nonprofit organization responsible for handling indigent criminal defense cases in a particular jurisdiction.

Mixed Systems: Mixed systems usually combine the public defender approach with any of the other methods. The need for a mixed system arises from the conflicts of interest that can

occur when there is a need to represent criminal defendants having inconsistent legal positions, including codefendants in the same indictment.

Today, approximately 80 percent of all criminal defendants are represented by appointed defense counsel, according to Stacey L. Reed in “A Look Back at Gideon v. Wainwright After Forty Years” (*Drake Law Review*, Fall 2003). States are free to choose their own indigent defense system, but individual localities may choose how to implement the systems. For example, in Virginia, some localities use only court-appointed attorneys, while others use a public defender system that is sometimes supplemented with court-appointed attorneys.

In addition to the indigent defense representation systems described above, many lawyers across the country volunteer to represent criminal defendants on a completely voluntary, free basis, as part of their contribution to the communities in which they live, and as part of providing *pro bono publico* professional services (that is, services performed “for the public good”). However, although members of the private bar provide some support through their *pro bono* efforts, the vast majority of indigent criminal defense representation is provided through the public defense system.

Pro Bono Service in Civil Cases

In the United States (unlike in England), each party to civil litigation ordinarily is responsible for paying his or her own legal fees, unless the case involves a contract between the parties that provides for payment of the winning party’s fees by the losing party or in the relatively rare case where a statute provides for recovery of attorneys’ fees from the losing party by the prevailing party. (Such statutes usually relate to cases involving consumer fraud or civil rights.)

Also, in matters where there is a likelihood of a substantial recovery (such as in some car accident cases and other types of negligence lit-

igation where liability is clear and damages are large), plaintiffs may be able to find a lawyer who will take the case on a “contingency fee” basis, where the fees to be paid are based on a percentage of the amounts recovered, and the client does not have to pay any fees if there is no recovery.

Nothing in the U.S. Constitution addresses the right to counsel in a civil case. This distinction is understandable because the Bill of Rights was adopted largely to identify certain individual rights that the government was not allowed to intrude upon. In a criminal prosecution, it is the government that is attempting to prove that the defendant committed a crime and thus should be deprived of life or liberty (through capital punishment or prison confinement) or money (in the form of fines or penalties). The vast majority of civil cases do not involve the government as a party, so there was no need to address in the Constitution or Bill of Rights the question of whether parties to civil actions had a right to counsel.

Although there are some efforts in the United States to extend the constitutional right to representation to those who cannot afford to pay an attorney to various types of civil cases, the federal courts have not ruled that there is such a right generally. The Supreme Court has ruled in *Boddie v. Connecticut* (1971) that poor people seeking to obtain a divorce may do so without paying a court filing fee, “given the basic position of the marriage relationship in this society’s hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship.” The Court also has held that, in cases involving the government’s efforts to terminate parental rights (usually due to alleged mistreatment or neglect of the children), appointment of counsel for indigent defendants should be considered on a case-by-case basis (*Lassiter v. Department of Social Services of Durham County*, 1981), and that the costs of obtaining a transcript of the parental termination rights proceedings for

appeal purposes must be waived when the transcript is critical to an appeal of the decision (*M.L.B. v. S.L.J.*, 1996). The Supreme Court has not expanded these holdings into other areas, where the rights at issue were not deemed to be as important (or “fundamental” in the words of the Court).

Although the courts have not recognized a “fundamental right” for the poor to have legal representation in civil cases, there is no question that many kinds of civil legal matters affect the lives of individuals in a very profound way. Examples include obtaining domestic violence restraining orders, determining child custody and visitation rights, avoiding unjustified eviction from a residence, dealing with aggressive creditors’ actions and foreclosures, and recovering unpaid wages.

Recognizing the importance of ensuring that low-income persons have access to the courts, beginning in the late 1800s private organizations began providing legal representation to the poor in some major U.S. cities. As summarized by John S. Bradway in *Legal Aid Bureaus* (Public Administration Service, 1935), the Legal Aid Society of New York was founded in 1876, two legal aid organizations in Chicago began operations in 1885 and 1888, and the Boston Legal Aid Society was founded in 1914. By 1917 there were 41 legal aid programs across the United States.

These efforts by private organizations continued to gain ground. The American Bar Association and local bar associations started supporting the provision of legal services to the poor in the early part of the twentieth century. These local legal services organizations were the primary means of delivering civil legal services to indigents until the mid-1960s, when the federal government passed the Economic Opportunity Act and created the Office of Economic Opportunity (OEO) as part of that era’s War on Poverty.

In 1964, the Economic Opportunity Act created local Community Action Agencies,

which were mostly nonprofit organizations, and provided direct funding for their activities. Prior to the passage of the Economic Opportunity Act, local legal aid programs were funded primarily by city and county governments and private organizations. The total funding for these offices as of 1965 was only \$4 million, with only 400 full-time legal aid lawyers available to serve nearly 50 million poor people. By 1966, the OEO had allocated over \$25 million to more than 150 legal services programs. By 1971, the OEO contribution to civil legal assistance was \$56 million, and 2,660 staff attorneys were working in more than 850 offices in 250 locations.

In 1974, Congress created the Legal Services Corporation (LSC), an independent private corporation with an 11-member board appointed by the president with the consent of the Senate. Like the OEO, the LSC was not to provide direct legal representation, but would instead provide financial assistance to qualified local programs.

Congress has varied the LSC's funding substantially over the years, and recent budget cuts have resulted in a substantial reduction in the availability of legal services to low-income persons through LSC-funded programs. Many people now must look elsewhere or be unrepresented. The question remains as to how this need for legal representation can be addressed.

The Legal Profession's Response

The American Bar Association (ABA) has published a set of model rules of professional conduct for lawyers. Because lawyers in the United States are licensed by the respective states, the rules are not binding on lawyers or on the states, but rather serve as suggestions and guides. However, the states review and often adopt ABA guidelines, making whatever revisions they believe are appropriate for their respective jurisdictions.

Within the past decade, the ABA created a model rule that encourages private bar members to perform at least 50 hours of *pro bono*

publico services per month. To date, at least 16 states have adopted some form of the ABA model rule, with goals for numbers of annual pro bono hours that vary from state to state.

The ABA sponsors or is involved in a variety of programs designed to promote pro bono activities by the private bar. More information regarding the ABA's various pro bono efforts may be found on the Internet at <http://www.abanet.org/legalservices/probono/home.html>.

Another organization dedicated to increasing pro bono activities of the private bar is the Pro Bono Institute (PBI), a small nonprofit organization established in 1996 and housed at the Georgetown University Law Center in Washington, D.C. Like the ABA, PBI does not provide direct legal services to the poor. Instead, it provides research, consulting services, analysis, and assessment of pro bono programs, and provides publications and training to a broad range of legal audiences. As part of its effort, PBI asks major law firms across the country (having 50 lawyers or more) to commit to provide pro bono services, on an annual basis, in an amount equal to 3 percent or 5 percent of the total hours of billable services rendered per year. (Each self-selecting, participating firm chooses which of these two percentages it wishes to commit to perform.) PBI also has programs encouraging corporate legal departments to perform pro bono services. More about PBI can be found on the Internet at <http://www.probonoinst.org/project.php>.

Bar associations and other legal service providers in various state and local jurisdictions have also stepped up, in varying degrees, to assist in providing pro bono services to the poor. We will use Washington State as one example, but other states have their own approaches to the situation.

In 1992, the Washington State Bar Association (WSBA) resolved that each of its member attorneys should contribute to "public interest legal service" to low-income persons or to matters designed primarily to address the needs of the low-income individual in the state. A con-

ference held in 1994 developed the Volunteer Attorney Legal Services Action Plan. In the same year, the Washington Supreme Court appointed an Access to Justice Board, which is responsible for coordinating the efforts of various organizations in Washington State to provide civil legal services to low- and moderate-income people.

Two publicly-funded programs, available to residents of Washington State are the Northwest Justice Project (NJP) and Columbia Legal Services. NJP representatives provide telephone consultations to financially eligible clients. In cases requiring further assistance, NJP can refer the matter to members of the bar who have some expertise in the particular area of law at issue. Columbia Legal Services employs staff attorneys to represent low-income clients in civil matters. In addition, there are at least 24 independent pro bono programs in Washington State, each having full- or part-time staff and panels of volunteer lawyers. These private sector programs work cooperatively with NJP and Columbia Legal Services in efforts to provide civil legal assistance to low-income persons.

The King County Bar Association is one example of these programs. It provides assistance to low- and moderate-income people in its jurisdiction, through its own staff attorneys, through neighborhood legal clinics, and through an extensive panel of volunteer lawyers. Other legal service providers include the Spokane County Bar Association, the Northwest Women's Law Center, the Eastside Legal Assistance Program, the Northwest Immigrant Rights Project, the Washington Advocacy and Protection Service, and Washington Attorneys Assisting Community Organizations (a statewide program designed to involve business lawyers in assisting nonprofit, community-based organizations in nonlitigation legal matters on a pro bono basis).

Washington State has adopted a version of the ABA's model rule, which establishes a goal for WSBA members to perform at least 30 hours of *pro bono publico* services each calendar year



A representative of the Housing Justice Project (HJP) assists a King County, Washington, resident facing the loss of housing due to an eviction.

and provides for a recognition award to be presented to members who report that they have performed at least 50 hours of such services during the year. The rule became effective in September 2003.

There is much more to be done to meet the needs of those who cannot afford an attorney, on both the criminal and civil sides of the equation. The efforts to meet these needs are made difficult by limited resources, both in terms of available money and available lawyers. In addition to the lawyers compensated by public funds to represent criminal defendants and to staff the LSC-funded civil programs, it is critical for members of the private bar to discharge their professional responsibility to volunteer their services to assist in this effort. Only through the combined efforts of the public and private sectors and legal practitioners themselves will the democratic ideals enshrined in the phrase "equal justice under the law" have meaning for all citizens.

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Photograph, above: Courtesy King County Bar Foundation/Association, King County, Washington

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Law Students in Court

Providing Access to Justice

Peter A. Joy

Clinical legal education in the United States provides practical experience for aspiring lawyers. Working under the supervision of law faculty as well as lawyers in the local community, students learn how to practice law and solve client problems. They interview clients and witnesses, analyze client problems, provide legal advice, research legal issues, and draft legal pleadings and documents, among other activities. In keeping with the pro bono expectations placed upon the U.S. legal fraternity, they often provide legal advice and access to the courts for those unable to pay for the services of a lawyer. The author outlines challenges for the development of clinical programs in other countries, but concludes, “Some form of clinical legal education is possible in every country wishing to involve law students in providing access to justice.”

Peter A. Joy is a professor of law at Washington University in St. Louis School of Law, St. Louis, Missouri, where he directs the Criminal Justice Clinic and also teaches classes in legal ethics and trial practice. He is past president of the Clinical Legal Education Association (CLEA), a membership organization of more than 700 law professors teaching clinical courses in the United States, and a former chair of the Association of American Law Schools (AALS) Section on Clinical Legal Education. He is the author of several law review articles on clinical legal education and legal ethics.

CLINICAL LEGAL education programs enable law students to provide legal assistance to persons and groups usually too poor to hire lawyers. Working under the supervision of law faculty, and sometimes other lawyers in their communities, law school clinic students learn how to practice law and solve client problems while providing access to the courts for those in need.

Leaders of bar associations, such as the American Bar Association (ABA), and judges in the United States have long supported clinical legal education because clinical programs play an important role in ensuring that access to the courts—a precondition for access to justice—will not be rationed to only those who can afford to hire lawyers. Bar leaders and judges also support clinical legal education because it is one of the most effective ways of teaching law students lawyering skills and the values of the legal profession.



Peter A. Joy

Learning by Doing

Clinical legal education is experiential learning, or hands-on learning through experiences. Many educators believe that experiential learning is one of the most effective means of adult learning, and this is particularly true for learning most professions. Today, medical schools in every country include a large component of experiential learning in the form of medical laboratories, clinics, and internships. Architecture students also receive a component of hands-on learning. Thus, clinical legal education is much like the experiential learning components medical and architecture students take as part of their professional education.

In the United States, clinical legal education normally refers to those courses where students have direct client contact and confront the same problem situations lawyers face in practice. These courses are called live-client clinical courses because students work with clients rather than with hypothetical problems and situations as they may in a problem-based simulation skills course, such as moot court.

In-house clinical courses are the most dominant type of live-client clinical courses, and they involve a law school running clinical law offices inside or near the law school. Law students taking in-house clinical courses usually work under the direct supervision of law faculty who are also lawyers qualified to practice law. In an in-house clinical course, law students interview clients and witnesses to gather facts, analyze client problems and provide legal advice, perform legal research and draft legal pleadings and documents, conduct transactional work for clients, and perform most of the legal work on client cases.

In addition, student practice rules throughout the United States grant law students the limited license to practice law provided clinical faculty or lawyers supervise the students. Students certified under student practice rules also negotiate with lawyers for opposing parties and represent clients before courts, administrative agencies, and other tribunals. The student practice rules in almost every jurisdiction are designed to facilitate the twin goals of clinical legal education: (1) teaching students how to learn lawyering skills and professional values through real-life lawyering experiences, and (2) providing needed legal services to clients traditionally unable to afford legal counsel.

The second type of live-client clinical course is called an externship or field placement program because the students work in offices outside of the law school that are run by others. In these courses, law students work with lawyers in a variety of law offices and perform many of the same types of legal work as do students taking in-house clinical courses. A major difference between most in-house clinical programs and some externship programs is that fewer students in externship programs have limited licenses to practice law and therefore represent clients in court. Students in extern-



Professor Peter Joy coaches a law school student before she represents a client in court.

ships usually work in legal aid and public defender offices, prosecutors' offices, and other law offices providing services to the poor or representing the government. Some externships are with private law offices, and judicial externship programs provide students the opportunity to work as judicial clerks under the supervision of judges. Law faculty ensure that the lawyers and judges are providing quality supervision to law students working with them, and faculty usually have classes to discuss issues arising out of the externship practice experiences.

Placing students in the role of lawyers as much as possible is key to both in-house and externship clinical courses. Clinical teaching methodology focuses on students confronting client problems much like lawyers confront in practice, identifying and handling the client problems with supervision by faculty and sometimes other lawyers, and engaging in self-critique and critique by the supervising faculty or lawyers.

Every School Has One

Clinical legal education in the United States has existed for quite some time, but its real development occurred in the 1960s to 1990s. Proponents of clinical legal education from the earliest times have stressed the social dimension of law students providing legal assistance to those in need. Today, every law school has a clinical program, and most clinical programs consist of both in-house and externship clinical courses.

More than 15,000 law students, or approximately 35 percent of law graduates from ABA-approved law schools, currently take in-house clinical courses each year. In addition, nearly 15,000 law students participate in externships. Today in the United States, a modern law school education includes the opportunity for students to participate in clinical courses.

Clinical courses are also gaining in popularity throughout the world. Common in Canada and Australia for many years, clinical courses also are well-established in some law schools in Chile, Great Britain, India, the Netherlands, South Africa, and Sweden. In recent years, there has been a growing interest in clinical courses in countries such as Croatia, Romania, and Russia. Recent changes to the Japanese system of legal education that have gone in effect in 2004 are spurring several new graduate-level law schools to develop clinical courses.

Although the legal systems and cultures differ throughout the world, the movement toward clinical legal education continues to focus on integrating experiential learning into the study of law. In addition, in most countries clinical legal education contributes to providing access to justice for those traditionally underserved by lawyers.

A Significant Impact

The impact of clinical legal education in providing access to justice for those unable to afford lawyers has been significant in the United States. Thousands of law students taking in-house and externship clinical courses each year join the mere 5,000 to 6,000 lawyers working for organizations that represent the 45 million Americans who are so poor that they qualify for civil legal aid. In addition, other clinic law students help to provide criminal defense to those in need, and others in externships assist prosecutors and other government lawyers at the local, state, and federal levels.

In addition to providing access to the courts for clients and learning lawyering skills, law students also learn legal ethics rules and the norms of the legal profession first-hand in their clinical courses. Studies demonstrate that the first jobs of lawyers are critical to the development of professional responsibility, and clinical courses have the advantage of exposing law students to the pressures of law practice in an express learning environment. The involvement of law faculty in these courses assists law students in reflecting upon their ethical obligations to clients and the legal system.

Clinical legal education offers an advantage over experiences law students may receive as law clerks, in most apprentice programs, or as new lawyers. In most other settings, law clerks, apprentices, or new lawyers often receive very little guidance. Experience alone often is unstructured. In well-structured clinical courses, law faculty provide law students with the opportunity to confront ethical issues as lawyers and then discuss those issues. In this way, law students in clinical courses learn the norms of the legal profession.

Finally, most clinical courses serve an extremely important function by involving law

students in the provision of pro bono legal services to those in need. In the United States, lawyers are expected to donate some of their time in providing legal services for free or at reduced rates for those too poor to hire lawyers. Although not every lawyer fulfills this expectation, a number do. Exposing law students to their obligation to provide pro bono representation may help to make this a part of their future practice as lawyers.

Four Challenges

Although clinical legal education is firmly established in the United States and some other countries, it is not a common part of legal education everywhere. There appear to be at least four challenges for the development of clinical programs in other countries.

First, in many countries only a small number of persons who study law plan to practice law. In these countries, law is not taught in a professional school; rather, it is an undergraduate major like history or political science, and a large number of the professors teaching law may not even be eligible to practice law. Unless special clinical courses are designed for students who want to become lawyers, clinical legal education is unlikely to be a viable method of instruction in these countries.

Second, some countries have established apprenticeship or clerking experiences that in theory are meant to provide the practical training for those who will become lawyers or judges. In these countries, many of which also treat law as an undergraduate discipline, clinical legal education courses may only become a viable component of the apprenticeship or clerking experience if the courses are designed to complement and not compete with the other practical training programs. Clinical courses in these countries can play an important role in providing access to justice for clients unable to

afford lawyers, and they can be experiences prior to or after apprenticeships or clerking experiences.

Third, the cost of in-house clinical legal education courses may be too great for some countries. In the United States, this type of clinical legal education uses a very low student-to-faculty teaching ratio, and the courses are very time intensive for law faculty. The benefit of this type of legal education outweighs the costs in the United States, but that may not be true in all other countries. In some countries, externship programs involving faculty less intensively than in-house clinical courses may be more feasible. In these countries, clinical courses still can be structured so that students primarily work on cases handled by nongovernmental organizations and government-funded programs that provide legal assistance for those unable to hire lawyers. Law faculty can ensure quality control over the supervision that students receive from lawyers working in these offices, but do not have to have the direct responsibility for supervising the clinical students' work.

Finally, in many countries the legislatures or high courts would have to adopt laws or rules to permit students in clinical legal education courses to perform the work of lawyers. Even if students are not given the limited license to practice law, clinical courses designed so that students may do as much of the work as possible under existing laws and rules will be a huge step forward in these countries. Thus, the absence of a law or rule to grant a limited license to practice law need not prevent the development of clinical programs.

None of these obstacles is insurmountable. Some form of clinical legal education is possible in every country wishing to involve law students in providing access to justice. In addition to fulfilling that objective, clinical programs will better prepare students for the ethical practice of law.

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Photograph page 20: Mary Butkus/WUSTL Photo

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Bridging the Gap Between Citizens and Their Courts

Shira J. Goodman and Lynn A. Marks

Most citizens' knowledge of their court system is limited to their experiences as litigants, witnesses, or jurors. Pennsylvanians for Modern Courts (PMC) was created to educate the public and to improve the quality and administration of justice by state courts. PMC engages civic organizations, bar associations, and government watchdog groups in its efforts to effect court reform and to increase public confidence. The authors give examples of how their coalition-building approach has succeeded to improve Pennsylvania's justice system and to encourage citizen involvement.

Pennsylvanians for Modern Courts is a nonprofit, non-partisan organization working to improve the courts in Pennsylvania. Shira J. Goodman and Lynn A. Marks are the associate director and the executive director, respectively, of Pennsylvanians for Modern Courts.

IT IS VERY DIFFICULT to place a label on the relationship American citizens have with their courts. Americans, of course, are proud of their court system and would be unlikely to surrender the judicial branch of government and the power it wields to either the executive or legislative branch. At the same time, some Americans have become distrustful of the courts, expressing the view that judges have exceeded their mandate and rendered decisions that do not reflect the will of the people. This phenomenon reflects a fundamental tension in American democracy. Although the courts exist to serve the people, the judge's duty is to apply the law in a fair and even-handed manner. The best way to resolve this tension is through education, both of the citizenry and of the people who staff and run the courts. Nongovernmental organizations can fill the role of educator, communicator, and facilitator, bridging the gap between citizens' expectations and the courts' role. This is one of the main functions of Pennsylvanians for Modern Courts (PMC), a non-



Shira J. Goodman

profit, nonpartisan court reform organization operating in the northeastern state of Pennsylvania.

PMC was founded in response to the findings of the Pennsylvania Judicial Reform Commission, a blue-ribbon panel of civic leaders, public officials, legal professionals, and members of the judiciary commissioned by then Governor Robert Casey and chaired by Superior Court Judge Phyllis W. Beck. In 1988, the commission found that confidence in Pennsylvania's judiciary was appallingly low. The commission believed that public faith in the judiciary and the court system needed to be restored; a court system is only strong if the public believes it dispenses justice fairly and impartially. PMC was created by a group of citizens motivated to achieve many of the reforms identified as critical by the Beck Commission.

Educating the Public and Reforming the Judicial System

PMC's mission is to improve the quality and administration of justice in Pennsylvania. With improved courts should come renewed public confidence in the system. To accomplish this

mission, PMC promotes greater public understanding of the role of the courts and builds an educated coalition for change. PMC serves as a resource about the courts to citizens, public interest organizations, reporters, policy makers, and academics through educational forums, classroom appearances, direct communications, and the publication of citizen guides. As the only state or local organization in Pennsylvania that exclusively addresses issues involving the judicial system, PMC performs a unique educational and watchdog role.

Many states, like Pennsylvania, still use judicial elections to select some of their judges. Arguably, citizens' greatest opportunity to be involved in or to affect the court system would take the form of electing judges. Sadly, turnout for judicial elections is very low. Instead, the most frequent contacts between citizens and the courts remain the experiences citizens have as litigants, witnesses, or jurors. Although such interactions may highlight the need for change, they do not afford the opportunity to educate and communicate with the courts; they do not provide the chance to reform the courts in any meaningful way. This reality underscores the need for nongovernmental organizations to take up the call for reform.

Bar associations, government watchdog groups, and citizen groups each have a role to play in this process. PMC has assumed a special role in this mix, serving as a bridge between the courts and the citizens, though both those groups must be invested in the reform movement. To achieve this, we strive to remain a citizen-based group that works for and with citizens while also maintaining a high profile with the leaders and administrators of our court system. At times, this task is difficult. We have found that these seemingly disparate elements of our organizational identity enable us to be an effective advocate for reform.



Lynn A. Marks

We seek to engage citizens in all of our work. We speak to community groups, design programs for schools, and publish and distribute citizen guides about the courts, the judicial discipline system, and jury duty. Citizens have a critical stake in ensuring the existence of accessible courts with qualified judges and personnel. In Pennsylvania, changes to the judicial discipline process and the method of judicial selection require constitutional amendments, which ultimately must be approved in a public referendum. The citizens, therefore, make the final determination about the operation of the judicial system. Citizens must be educated about the courts, the importance of the courts, and the need for change. Only with such knowledge can they be fully engaged in the effort to achieve reform.

Reform can most effectively be accomplished by coalition building. PMC's work focuses on several areas of the judicial system: judicial selection, the jury system, and judicial discipline. Our partners change depending on the nature of the project, but the constant factor is that we rarely work alone. Instead, we seek to partner with others. This networking gives breadth to our calls for reform and demonstrates

the well-recognized need for change. In addition, the voices of our partners, whether they are bar associations or citizen groups such as Common Cause, the League of Women Voters, or the National Association for the Advancement of Colored People (NAACP), lend legitimacy to our efforts; their partnership signals to legislators and judicial officers that the need for change is real.

Judicial Ethics and Legislating Changes

This is the strategy PMC followed in the early 1990s when working to create a new judicial discipline system for Pennsylvania. In the wake of scandals involving corrupt judges and the impeachment of a sitting Pennsylvania Supreme Court justice, PMC worked to make the judicial discipline process more effective. Changing the process required a constitutional amendment. PMC amassed a coalition and started consulting with key legislators about the necessary elements of an effective judicial discipline process. PMC's input was critical in designing the constitutional amendment, and the coalition for reform educated the public about the need for change. Ultimately, success was achieved when the 1993 public referendum approved the constitutional amendment.

As our experience with the judicial discipline process demonstrates, coalitions can be powerful engines for change. PMC also proved during that process that it was a valuable resource for legislators charged with drafting rules and laws dealing with the courts. Whenever one branch of government is in a position to exert power over another, whether through rulemaking or financial control, tensions arise. Organizations like PMC can help facilitate the process by acting as an impartial voice to educate legislators about the court system and the need for reform. PMC often assumes this role of outside advisor when bodies outside the court

system are empowered to effect change; a prime example is when legislative bodies are considering court-funding requests.

Equality and Fairness

Sometimes for change to occur, however, the courts themselves must be spurred to act by outside pressure. We, of course, are not referring to how judges make decisions in specific cases. Rather, at issue are systemic reforms that aim to ensure that courts treat all litigants equally, impartially, and without regard to race, gender, ethnicity, or socio-economic status. Courts are not immune from the issues facing society as a whole; they cannot be isolated from work geared towards achieving equality and eradicating bias. Some courts, however, have been slow to respond to the call for such reform. As a result, extrajudicial or nongovernmental organizations and individuals have united to motivate the courts to act. The outcome: State court systems throughout the nation have appointed committees to study issues of bias.

In Pennsylvania, PMC worked for years with state and local bar associations to motivate the Pennsylvania Supreme Court to study the issue of racial and gender bias in the justice system. Finally, in 1999, the Supreme Court appointed a Committee on Racial and Gender Bias in the Court System. The committee was given a staff and a budget and was assigned to study the state court system to determine whether racial or gender bias plays a role in the justice system. The Supreme Court supported the efforts of the committee, which involved conducting surveys, holding focus groups, engaging academics, and studying courts throughout the state to determine where and how bias infected the justice system. In March 2003, the committee presented a comprehensive report to the Supreme Court, identifying multiple areas where bias persisted and recommending measures for the Supreme Court, the

legislature, bar associations, and individual lawyers to take to reduce bias in the court system. The Supreme Court has appointed implementation task forces to assist the court's efforts to adopt some of the committee's recommendations. This is a fine example of how a citizen-based coalition's call for reform finally was heeded by the court system and, ultimately, adopted as an effort of the system.

PMC also seeks to partner with the court system, the very institution we are seeking to change. In addition to calling for reform, identifying problems, and drawing attention to problems in the administration of justice, PMC publicly praises the court system for innovations and programmatic successes, supports the courts' own reform efforts and works with the courts to further the mission of improving the court system. Our approach is balanced: we do not shy away from publicly identifying problems in the justice system, but neither are we full-time "attackers" of the courts.

Programs for Jurors

One example of our productive partnership with the courts is the annual Juror Appreciation Day, which we have sponsored for five years with the Philadelphia Court of Common Pleas. This program recognizes the citizens who serve as jurors in our criminal and civil courts. Juror Appreciation Day represents an opportunity for the courts and the judges to express appreciation to the jurors, to highlight the importance of jury duty, and to publicize the need for citizens to serve. We have worked with the local court to create short, informative, and, we hope, inspiring programs that encourage service and recognize the efforts of the jurors. Each year, Juror Appreciation Day has attracted positive media attention, and PMC has been asked to develop a similar program for the Allegheny County Court of Common Pleas in Pittsburgh.

Juror Appreciation Day epitomizes the positive effect partnering with the courts has on PMC's mission. PMC's Jury Project aims to increase the number of citizens summoned for and reporting to jury duty, enhance the diversity of jury pools, and improve the juror experience by making it easier to serve. The courts share these goals. Working together to develop programs aimed at increasing juror service and devising ways to make jury duty less burdensome is a natural fit for PMC and the courts. This collaborative work enhances PMC's standing and enables our other reform efforts to proceed as well.

Ongoing Process

As a citizen-based reform organization, it is our responsibility to identify problems and recommend strategies for change. Although we can mobilize constituencies and educate the public and the courts about the problems we observe, we cannot act unilaterally to change them. For many of our ideals to become reality requires cooperation and acceptance by the court system. This is achieved by education and by the power of strong relationships built upon mutual respect and understanding. PMC's unique status as a community-based, nongovernmental organization positions us to lead the movement for reform in Pennsylvania and engage both citizens and the courts as our partners. We believe that uniting the separate spheres of the public and the courts will enable us to improve the courts and restore public confidence in the judiciary and the court system. The work is ongoing, but we are hopeful that our work to bridge the gap between citizens and the courts will continue to achieve success.

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Street Law

Lessons for Life

An Interview with Richard Roe

More than 30 years ago, Georgetown University in Washington, D.C., created a program for its law school students to teach a course in a few local public high schools on the fundamentals of law, democracy, and human rights. The project became known as Street Law and eventually was extended to all public high schools in the nation's capital. Street Law materials have grown from a loose-leaf binder of lessons to a unique textbook, now used in school districts in all 50 U.S. states. In addition, Street Law has developed a course for adult learners. Approximately 70 law schools nationwide operate Street Law programs. Richard Roe, a law professor at Georgetown University and the director of its Street Law clinic, discusses the unique educational experience that Street Law provides.

This interview was conducted by Darlisa Crawford, a writer for the Washington File, a news service of the U.S. Department of State.

Ms. Crawford: How did Street Law come about?

Mr. Roe: Street Law came about at Georgetown Law Center in about 1972 as part of a program in which law students worked with community groups, and somebody had the idea not only to work with community groups, but also to actually teach in high school classes. Four law students taught in two high schools in the District of Columbia, and it was so successful that it soon became a national program.

Question: How does Street Law provide a service to the community?

Mr. Roe: Essentially, Street Law is a course in practical law; its focus is on the law that affects persons' everyday lives.

The Street Law Book contains a general introduction to law and chapters on specific topics, such as criminal law, consumer and housing issues, family law, tort law, and individual rights law. The book also is filled with problems, case studies, and hypothetical situations, which are meant not to be just read as information but to be participated in by the



Richard Roe

reader and to be taught in an active way. Street Law instructors try to draw information from students about their own values and knowledge, and to build upon that, so that in the classroom a true discourse arises.

But Street Law is more than just practical law. It introduces the grand theories of law and justice, as well as constitutional law; in other words, the foundations of our democracy.

And that's why Street Law is very effective: it draws on students' knowledge, values, and experiences and connects them with the overall framework of the law at the same time. Street Law is discourse-based, in the same way that democracy and civic practice are discourse-based. So you're really using the law to teach fundamental civic, democratic thinking and expressive skills, which makes it a very powerful class.

Question: How does Street Law correlate with the curriculum of public schools?

Mr. Roe: It correlates very closely in many ways. In the social studies curriculum there are required courses in U.S. history, U.S. government, and civics. If you look at those textbooks and the curricular focus in those areas, it

always comes back to the law. Even a U.S. history textbook will discuss important Supreme Court cases and maybe even some state court cases. In fact, in the District of Columbia, Street Law often is taught not as an elective, but along with a required government or civics class. Therefore, the kids learn both their regular government curriculum and the Street Law information.

Another important way that Street Law correlates with the curriculum is by its method of teaching in a highly participatory way, with the students having a voice. Street Law helps the students become critical thinkers and participants in government. The Street Law class develops analytical thinking, expressive writing, and logic types of skills.

In role-plays, debates, and mock trials, the students are doing the thinking and the talking. In a well-taught Street Law class, you engage the students in more writing and more articulation, which enhances their literacy skills.

Question: Can you describe the methods of Street Law?

Mr. Roe: The teacher is not the fountain of knowledge, although the teachers have to know the material very well in order to do this. They present themselves as the orchestrators in an exchange of ideas. The primary thing is that the students, for the most part, do the thinking and the talking in the classroom. Course materials for discussion could include judicial case studies, problems, or hypotheticals; current newspaper articles; and—a popular source—videos from movies or television programs.

Street Law is most noted for the popularization of the mock trial as a teaching method. Participants play the roles of lawyers and witnesses in a contest format. In our high school program, we have a 40- to 50-page scenario for a mock trial, with three witnesses on each side, many examples of evidence, and description of certain laws that apply. The kids have to put

together all this information, put the witnesses on the stand, and cross-examine them. We give them six weeks to prepare, and it's thrilling to watch the kids do this. Many of the most experienced judges say the kids are as good as many of the people they see in the courtroom. The kids master the technique. At Georgetown University, second- and third-year law students can take a course in which they learn to teach Street Law. Principally, we teach law students the interactive methodology, and the mock trial is perfect for this.

Whatever the methodology—and there are all kinds of teaching techniques—what you try to do is align the method with the topic that you're teaching, so you use the best method to bring out the ideas.

The basic principle is that the materials and the methodology should be engaging to the students. And at the same time, the class should be rigorous and challenging. It should take students some places intellectually and expressively and knowledge-wise and perspective-wise where they've never been before.

We have the Street Law book as a textbook, and we have a huge lesson bank of materials, because we've been running our program for well over 20 years. However, our law students like to custom make and adapt lesson plans to changing law and to their particular students.

Question: Can you explain the mentor program affiliated with Street Law?

Mr. Roe: We thought that it would be very helpful, not only to have law students teaching, but also to have real practitioners get involved. The first step is to find organizations who are willing to put some time in. Our mentors have come from large and small law firms, public interest groups, and government agencies. The Department of Justice, for example, has a branch that serves as a mentor. The Department of Labor for a period of time served as a mentor. Mentors teach classes from time to time on subjects that

they're knowledgeable in and that coincide with the Street Law curriculum. The instructor may be an attorney, a paralegal, or other staff member from the mentor's office.

We want mentors, however, not only to come in as guest speakers, but to do more participatory things as well. Mentors often bring the high school kids to the law firm or to the government agency, so they can see what actually goes on there in the full practice of law, as well as to see the substance of the work involved. Students may look at case files, as long as they are not violations of confidence, and talk about the cases. They also can interview the staff and find out what the various jobs are at the law firms, because they're not all lawyers. Many of our students are hired by their mentor firms for the summer, and some have worked for them afterwards in various capacities.

The mentors often take the students to legal events in the community. For example, sometimes a law firm has a partner who was a Supreme Court clerk, and they may arrange for an interview with a Supreme Court justice. Mentors may take students to see a court case that the law firm or the government agency is arguing. The mentors are great coaches who provide a lot of time and resources.

Question: How does the Street Law community clinic engage adult learners?

Mr. Roe: It is very similar to the high school approach on some levels. We teach the Street Law community clinic in a number of community settings: in city jails and treatment facilities, homeless shelters, battered women's shelters, HIV and AIDS shelters, juvenile detention homes, and other places. Principally, we teach people who may have had encounters with the law that were potentially adverse or who are in situations where they could use some ideas about how to make the law work for them. Students can't give legal advice in Street Law,



Georgetown Law professor Richard Roe teaches a Street Law class in a Cambodian village in July 2004.

because it's an education course and the students aren't lawyers yet. However, they can talk about how the law works and explain statutes and cases, and people can make decisions for themselves about how to proceed.

Adult students look at rules, court procedures, and processes: for example, how to deal with a landlord or how to write a letter of consumer complaint. Topics include housing, family, individual rights, damages, tort law, consumer law, and public benefits. Through these activities students learn that the law is a positive force in society, regulating our behavior, limiting excessive power, and providing a structure for the common good.

Question: How do you adopt Street Law to another language, culture, or environment?

Mr. Roe: I think that the law should be understood in the context of values, culture, and choices. I have considerable experience teaching Street Law in other countries. I've worked in Slovakia, the Czech Republic, England, Istan-

bul, the Dominican Republic, and Cambodia. They're very different places. The law has to come out of their fundamental values and connect with their culture. The idea of taking Street Law to another country for me is not taking the American system of justice and the American Constitution and the American laws as a wholesale transplant into another setting. It's using fundamental ideas of law that are universal. I also try to understand the country's culture, history, and language, moving the lesson in a way that becomes meaningful in that context. Some parts of Street Law don't need to be modified very much, and some do. If we have to write a whole new curriculum for a country, people from that country usually write it with their own laws and procedures. Regardless, the methodology stays the same.

Question: Has the effort to internationalize Street Law been successful, in your opinion?

Mr. Roe: It's not so much trying to internationalize. It's to take the concept of having the public participate in the law, making the law accessible to the average person. It is having a mission to demonstrate that democracy is based upon participation of citizens in an informed way in the world around them, particularly in areas of governance, but also in the daily transactions of their lives. It becomes a very powerful democratizing process, internationally, because you're able to help people see that the law can be accessible to them.

Every country's situation is different, but there can be a real role for Street Law in some places. For example, people from South Africa have worked very hard to develop their own versions of Street Law, so that it becomes customized to local settings. Laypersons can take it out into the country, and teachers can teach the basic ideas of law and justice; you don't have to have lawyers or law students doing it. Teachers of Street Law often come from government agencies, nongovernmental organizations, or churches. I've made a lot of Street Law presentations for those types of organizations. The idea is to tailor the material to the needs and interests of the people who want it, with a lot of cultural understanding.

Question: How will Street Law evolve in the future?

Mr. Roe: Street Law makes law accessible and democracy accessible to as many people as possible. Street Law gives people a voice that's based on intelligent thinking, expressive thinking, and the values that they believe in. You're not dictating the values to them particularly, except that I think there are espoused fundamental common values. The great ideas of justice and democracy will reach more people, becoming much more meaningful.

In the future more universities and law schools around the world will adopt Street Law programs. Law students will do Street Law as a

public service or for credit courses as part of service learning. They will go out into the communities, into the cities, into the villages, teaching about democracy using the laws of their own country.

Secondly, I think that by developing these fundamental principles and using these approaches, the systems of government and government accountability will be improved. It will be a great way to improve the promulgation of justice as more people become capable of maintaining their interest to participate in government to the highest degree.

One advantage of Street Law is that it's actually a very inexpensive program to run. You can create a curriculum and train people in the curriculum, and those people can teach other people to do it.

One important aspect of Street Law is, we believe, that the process of learning is as important as the information learned. What's really learned is not, for example, whether capital punishment is good or bad, but that when learning about any subject—capital punishment, human rights, landlord and tenant matters—students learn to think about what the underlying values are, what the various policy choices are, how the greater good is served, how individual rights are protected. In that way, Street Law engages people into thinking about what can be accomplished through the law.

This works internationally because we don't come in there with any particular subject in mind or any particular bent to teach. We're teaching largely about the fundamental issues of achieving democracy and justice in a society. We're teaching about what those processes and tools happen to be as they could be applied to any subject.

The opinions expressed in this interview do not necessarily reflect the views or policies of the U.S. government.

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B i b l i o g r a p h y

Further Reading on Access to the Courts

PRO BONO

Association of American Law Schools Equal Justice Project

Pursuing Equal Justice: Law Schools and the Provision of Legal Services. Washington, DC: Association of American Law Schools, 2002.

http://www.aals.org/equaljustice/final_report.pdf (accessed August 3, 2004)

Binder, Steven R.

The Homeless Court Program: Taking the Court to the Streets. Washington, DC: American Bar Association, Commission on Homelessness and Poverty, 2002.

Rhode, Deborah L.

"Access to Justice: Connecting Principles to Practice," *Georgetown Journal of Legal Ethics*, Vol. 17 (Spring 2004) pp. 369–422.

Street Law for Youth Courts: Educational Workshops. Washington, DC: Street Law, Inc., 2002.

CLINICAL LEGAL EDUCATION

Arbetman, Lee P. and Edward L. O'Brien

Street Law: A Course in Practical Law. 7th ed. New York: McGraw-Hill, 2004.

Association of American Law Schools Pro Bono Project

A Handbook on American Law School Pro Bono Programs. Washington, DC: AALS, 2001.

<http://www.aals.org/probono/probono.pdf> (accessed August 3, 2004)

Gould, Keri K. and Michael L. Perlin

"Johnny's In The Basement/Mixing Up His Medicine: Therapeutic Jurisprudence and Clinical Teaching," *Seattle University Law Review*, Vol. 24 (2000) pp. 339–381.

Wizner, Stephen

"The Law School Clinic: Legal Education in the Interests of Justice," *Fordham Law Review*, Vol. 70 (2002) pp. 1929–1940.

CITIZEN VOLUNTEERS

Dickey, Walter J. and Peggy McGarry

Community Justice in Rural America: Four Examples and Four Futures. Washington, DC: U. S. Department of Justice, Office of Justice Programs, 2001. <http://www.ncjrs.org/pdffiles1/bja/182437.pdf> (accessed August 3, 2004)

Hans, Valerie P.

"Introduction: Lay Participation in Legal Decision Making," *Law and Policy*, Vol 25. No. 2. (April 2003) pp. 83-92.

Leenhouts, Keith J.

Misdemeanor Courts, Hope for Crime Weary America: Volunteer Mentoring in Misdemeanor Courts. Reno, NV: National Judicial College, 2000.

Roman, Caterina G. et al.

Understanding Community Justice Partnerships: Assessing the Capacity to Partner. Washington, DC: Urban Institute, Justice Policy Center and Caliber Associates, 2003.

<http://www.ncjrs.org/pdffiles1/nij/grants/196552.pdf> (accessed August 3, 2004)

I n t e r n e t S i t e s

Internet Sites on Access to the Courts

PRO BONO LAW

American Association of Law Schools Pro Bono Project

<http://www.aals.org/probono/index.html>

American Bar Association, Division of Legal Services, Promoting Equal Access to Justice

<http://www.abanet.org/legalservices/publications/home.html>

American Bar Association Pro Bono Center

<http://www.abanet.org/legalservices/probono/home.html>

Equal Justice Works (formerly the National Association of Public Interest Law)

<http://www.napil.org>

Legal Services Corporation Resource Library

<http://www.lri.lsc.gov>

Legal Services: State Links

http://www.ncsconline.org/WC/Publications/KIS_ProBonStLnks.pdf

National Center for State Courts

Documents: Legal Services/Pro Bono

http://www.ncsconline.org/wcds/Pubs/pubs1.asp?search_value=Legal%20Services/Pro%20Bono&major_subject_area=The%20Bar%20and%20Legal%20Services

National Legal Aid and Defender's Association

<http://www.nlada.org>

Pro Bono Institute at Georgetown University Law Center

<http://www.probonoinst.org>

Washington State Access to Justice

<http://www.waaccesstojustice.org>

CLINICAL LEGAL EDUCATION

Clinical Legal Education: An Annotated Bibliography

<http://faculty.cua.edu/ogilvy/Biblio04.pdf>

**Directory of Law School and Public
Interest and Pro Bono Programs**

<http://www.abanet.org/legalservices/probono/lawschools/home.html>

**Pursuing Equal Justice: Law Schools
and the Provision of Legal Services**

<http://www.aals.org/equaljustice/final%5Freport.pdf>

Street Law

www.streetlaw.org

CITIZEN VOLUNTEERS

American Bar Association, Coalition for Justice

<http://www.abanet.org/justice/home.html>

**Noteworthy Court-Community Relations
Activities: A Compilation of State and Local
Court Programs**

<http://www.american.edu/spa/justice/publications/ccrp.html>

**Opening the Courts to the Community:
Volunteers in Wisconsin's Courts**

<http://www.ncjrs.org/pdffiles1/bja/178935.pdf>

Pennsylvanians for Modern Courts

<http://www.pmconline.org>

Volunteers in the Courts: A Resource Guide

http://www.ncsconline.org/WC/Education/KIS_VoluntGuide.pdf

The U.S. Department of State assumes no responsibility for the content and availability of the resources listed above, all of which were active as of August 2004.



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ACCESS TO THE COURTS

Equal Justice for All

BUREAU OF INTERNATIONAL INFORMATION PROGRAMS

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