

Equal Access to Civil Justice: Pursuing Solutions Beyond the Legal Profession

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When the fundamental principles of fairness and equal justice through the rule of law are shaken, the cornerstones of our democratic society are threatened. Respect for justice and laws is diminished when large segments of our society do not have equal access to civil justice because they cannot obtain legal assistance to resolve disputes that touch on the very basics of life (e.g., health care, food, and shelter) or to seek legal redress of their grievances.

Recent studies show that only one-fourth of poor California families with a civil legal problem receive full or partial legal assistance.¹ Not reflected in this statistic are the many people above the poverty line and of moderate means who experience serious legal problems but neither can afford to pay a private attorney nor qualify for free legal services. Without legal assistance, many of these low- or moderate-income Californians either simply give up or experience the frustration of representing themselves. The persistent failure of the justice system to help them has led them to conclude that justice is not for all.

While lawyers throughout the country collectively provide millions of pro bono hours each year, this outstanding contribution simply does not provide full representation for the growing numbers of civil indigent. Similarly, despite efforts by the judiciary to address the skyrocketing numbers of unrepresented parties, judges acknowledge that those who appear *in pro per* do not fare well in a contest in which the other side has

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1. See STATE BAR OF CALIFORNIA OFFICE OF LEGAL SERVICES, ACCESS TO JUSTICE WORKING GROUP, AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA 78 n.2 (1996) [hereinafter AND JUSTICE FOR ALL].

an attorney. The long history of traditional justice improvement efforts undertaken by committees of lawyers and judges demonstrates that the bar and bench alone cannot achieve access to justice for all.

To reach this goal, the *entire* community must be *partners* in the effort. Indeed, a new model for change is clearly emerging—one that reaches beyond bench and bar to the community at large.² Across the country, citizen-justice system partnerships are at work identifying local problems and addressing them with local solutions. These partnerships recognize that equal access to civil justice is the business of the whole community. They recognize that only the whole community can provide the needed resources and solutions.

One example of this model, the California Commission on Access to Justice (CCAJ), has worked to establish such partnerships since convening in fall 1997. Comprised of judges, attorneys, academics, leaders of business, labor unions, community nonprofits, and political appointees, CCAJ and efforts like it are absolutely necessary if we are to increase statewide funding for legal services to the poor, develop innovative and less expensive delivery of legal services for all, and make the system more accessible and user-friendly.

In this article we briefly detail the problem: most poor and moderate-income people cannot effectively resolve their legal disputes, and our society has not yet embraced its role in correcting this failure of our justice system. Next, we describe why the whole community must respond to the crisis by looking more closely at the CCAJ and similar partnerships, and the diverse community-wide interests served when we meet people's legal needs. We conclude with the optimism with which we approach the Access to Justice Commission work. There are tangible reasons to believe that together we can multiply justice and distribute it broadly.

I. THE PROBLEM

Adequate legal representation remains an unfulfilled promise for the vast majority of poor, near-poor and moderate-income Californians. However, American society has not given priority to the goal of equal access to civil justice and so has not ensured that the system has enough resources to provide legal representation to all who need it.

The California public has lost faith and trust in our justice system. Many people do not believe they have equal access to civil justice.³ The

2. The ABA's State Justice Initiatives Program, a continuing effort of the ABA Board of Governors and a series of ABA Presidents to encourage and support justice reform at state and local levels, periodically provides summaries of such state and local justice initiatives.

3. See REPORT OF THE COMMISSION ON THE FUTURE OF CALIFORNIA COURTS, JUSTICE IN THE BALANCE, 2020, at 82-83 (1993).

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number of Californians living in poverty has increased substantially in the past twenty years. Simultaneously, income disparities have grown and social policy has changed, dismantling or underfunding many programs that support people with low incomes, including child care, food stamps, and Supplemental Security Income (SSI) for disabled children. If the number of poor Californians continues to grow as experts predict,⁴ and if cuts in federal funding for legal services deepen and restrictions on these services increase, the situation will only worsen.

The need for civil legal assistance among low-income Californians far exceeds the resources currently provided through government and private charity. Studies reveal that the legal needs of approximately three-quarters of the poor are not met at all, and that the needs of the remaining quarter are sometimes met only partially. To further aggravate the problem, the number of poor people in California continues to increase faster than the state's overall population.

The lives of California's poor are highly regulated, and this gives rise to the need for legal assistance. The legal needs of the poor are as broad as their basic life needs: housing, food, health, family, employment, education, consumer finance, and individual rights. Those Californians who often need legal representation on matters critical to their survival include battered women, children, teenagers, the disabled, the elderly, migrant workers, the homeless, minorities, single parents, the unemployed, and victims of crime.

Consider the following statistics:

- The vast majority of poor Californians are women, children and the elderly. A disproportionate number are people of color.⁵
- Women represent sixty-two percent of those living in poverty in California.⁶
- One in four California children, or 2.2 million, live in poverty compared with one in five nationwide.⁷ From 1980 to 1993, California children living below the poverty line grew from 15.2% to 24.45%. A disproportionate number are children of color.⁸

4. An analysis by the Urban Institute estimated that the new welfare reform law will push approximately 2.2 million people—including 1.1 million children—into poverty. *See* S. ZEDLEWSKI, S. CLARK, E. MEIER, & K. WATSON, *POTENTIAL EFFECTS OF WELFARE REFORM LEGISLATION ON FAMILY INCOME* (Urban Institute 1996).

5. *See The Needs of Legal Services Clients in California* 6-8 (1995) (on file with the Office of Legal Services, State Bar of California).

6. *See id.* at 34.

7. *See id.* at 8 n.40.

8. *See id.* at 35.

- The elderly are 7.6 percent, or 530,000, of California's poor population.⁹
- Rural poverty in California counties (such as Fresno, Imperial, Merced, Tulare & Yuba) reached twenty percent or more according to the 1990 Census.¹⁰
- The safety net has shrunk and the income gap continues to grow in California. Annual income of the poorest one-fifth of families fell from \$12,300 to \$9,030 between the late 1970s and mid-1990s, while income of the richest one-fifth increased from \$98,020 to \$127,720.¹¹
- In the 1980s, half of low-income working families with children who were cut from public assistance needed to supplement their earnings because of budget cuts.¹²
- In 1994, 4.1 million working people earned at or below the minimum wage.¹³
- Even with the new 1998 minimum wage of \$5.75/hour, a full-time worker earns \$11,960 a year.
- While the numbers of poor Californians increased forty-one percent between 1980 and 1990, the number of legal services attorneys who provide free services to the poor decreased by twenty percent due to federal funding cuts in the 1980s.¹⁴
- As a result, in California there is one legal services attorney for every 10,074 poor persons, as compared to one private attorney for every 231 non-poor persons.¹⁵
- Moderate-income Californians also have little or no equal access to civil justice. The civil justice system does not meet sixty percent of the legal needs of moderate income households (defined as earning below \$60,000).¹⁶
- Moderate income Californians do not qualify for free legal services even though they may not have the financial ability to hire an attorney for their day in court.

9. See *id.* at 8 n.42.

10. See *id.* at 5 n.6

11. See K. LARIN & E. MCNICOLS, PULLING APART: A STATE-BY-STATE ANALYSIS OF INCOME TRENDS, app. X, tbl. 4 (Center on Budget & Policy Priorities 1997).

12. See SHORTCHANGED (Center on Budget & Policy Priorities 1988).

13. See Daily Labor Report (Mar. 13, 1995) (available on LEXIS, NEXIS library, DLABRT file).

14. See PUBLIC INTEREST CLEARINGHOUSE, UNEQUAL ACCESS: A REPORT ON THE DECLINING AVAILABILITY OF LEGAL SERVICES FOR CALIFORNIA'S POOR 1980-1990, 1 (1991) [hereinafter UNEQUAL ACCESS].

15. See *id.* at 5.

16. See ABA CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, LEGAL NEEDS & CIVIL JUSTICE: A SURVEY OF AMERICANS 15 (1994).

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- In 1991, approximately 20,800 private attorneys (sixteen percent of State Bar members) volunteered more than one million hours of free legal service, and another three million hours of pro bono services came from private attorneys through pro bono programs run by legal services or local bar association programs. But these contributions were not sufficient to meet the legal needs in California.¹⁷
- More and more Californians are going to court without an attorney. A 1997 survey by the Administrative Office of the Courts found that two-thirds of family law cases in California have one party without an attorney. In half of the cases, both parties went unrepresented.¹⁸
- In that same survey, thirty-six percent of family law judges reported that unrepresented parties received “unfair results or treatment” in the courts. Another forty-five percent of the judges reported *pro per* cases also burdened the courts and delayed other cases.¹⁹

Predictably, given these statistics, a 1993 national study of all income levels except the highest twenty percent found that people most highly satisfied with the justice system were those who had an attorney, or resolved their problem with some sort of legal assistance within the legal system.²⁰ These were the people who thought the system was fair. Others felt excluded, abandoned, and lost faith.

Locking people out of the civil justice system because they cannot afford a lawyer to navigate our complex legal system creates a ripple effect beyond the individual litigant. If a poor person cannot afford an attorney to defend a wrongful eviction, that person will likely end up homeless. A working mother who cannot hire an attorney to modify child support will likely end up on welfare. A person of color who cannot hire an attorney to redress discrimination in employment, housing or education falls deeper into the racial divide. These individual litigants lose their cases. And our democratic society also loses. It loses the confidence and trust of a large segment of our population.

17. See State Bar of California, *A Call to Justice: A Presentation by the State Bar of California 7* (1994) (conference paper on file with the Office of Legal Services, State Bar of California).

18. See Survey Conducted at California Judicial Council's Family Law Institute, Apr. 1997 (on file with author).

19. See JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS, *ACHIEVING EQUAL JUSTICE FOR WOMEN & MEN IN THE COURTS* 97 (1990).

20. See Consortium on Legal Needs and the Public, American Bar Association, *Legal Needs and Civil Justice: A Survey of Americans, Major Findings of the Comprehensive Legal Needs Study 17-20* (1994) (on file with the author).

As we continue to experience cuts in services for the poor, it becomes increasingly evident that our elected officials do not view it as their responsibility to ensure that all people have access to equal justice. Although some might argue that government fulfills its obligation by providing judges, courts, and other means of dispute resolution, as a practical matter in most cases there can be no access to justice without access to meaningful legal assistance. Thus those unable to afford counsel cannot receive justice unless they are provided lawyers. Society and its government have the same responsibility to ensure adequate counsel is provided for those who cannot pay for lawyers as it does to supply judges and courthouses.²¹

Ironically, this problem is specific to the United States. Most other industrial democracies already guarantee low-income people free counsel in civil cases either as a matter of statutory or constitutional right. These countries include England, Switzerland, Germany, France, Quebec, the Scandinavian countries, Italy, Spain, Austria, Greece, Australia and New Zealand. Their governments spend two to seven times more per capita than U.S. jurisdictions (including California) on civil legal representation for the poor.²²

II. THE RESPONSE

We must broaden responsibility and accountability for equal access to civil justice beyond the legal profession to involve the entire community.

A. *State Justice Initiative*

While many would not dispute the existence of the problem, solving it remains complex. These are systemic challenges. No one designed the justice system with an intent to exclude the poor, those who have language barriers, or even the middle class. Yet the fact remains that many of these people are excluded.

The most common response to the need for more legal services has been for lawyers and judges to form committees and task forces and convene conferences to develop solutions. There are hundreds of such justice improvement initiatives around the country now looking at access to justice for poor and moderate-income people. They focus on a range of issues: alternative dispute resolution; bias based on gender, sexual orientation, and race; substance abuse; civil and criminal procedures; funding for the system; family law and family courts; judiciary and jury issues; juve-

21. See AND JUSTICE FOR ALL, *supra* note 1, at 46.

22. See *id.*

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nile justice; lawyer professionalism; public education; self-help; assisting those with special needs; surveys of the public; and developing “user-friendly courts.”

However, a series of reports authored by the American Bar Association’s Ad Hoc Committee on State Justice Initiatives and Office of Justice Initiatives recently have noted a steady rise in improvement efforts that reach *beyond* bench and bar and into the general community. As part of the American Bar Association’s ongoing Justice Initiative Program, the Ad Hoc Committee conducted surveys of chief justices and state and local bar leaders. In its 1998 Summary Report on Justice Initiatives, the Committee notes that in reviewing more than 1150 justice improvement activities, 159 included the community at large. Documenting the growing trend, the Report notes 41 Justice Commissions, up from sixteen in 1996 and 11 in 1995; 27 Futures Commissions, up from eighteen in 1996 and eleven in 1995; and 42 Citizen Conferences, up from 25 in 1996 and 12 in 1995.²³

The methods employed to involve non-lawyers have been as varied as the participating jurisdictions. Justice Commissions, typified by a wide range of activities and focuses, are on-going justice improvement bodies. Futures Commissions address major long-term problems with the justice system and commonly culminate with publication of extensive reports on the future of justice in their respective states. Citizen Conferences collect and disseminate information about the community, discuss possible new program ideas, and consider programs from other jurisdictions.²⁴

B. California Commission on Access to Justice

Consistent with this new movement, California has established such a collaborative effort. Although there are many examples of these broad-based initiatives in California, only one is statewide and includes lawyers and non-lawyers. In March 1993, the State Bar of California appointed the Access to Justice Working Group and charged it with developing a long-term, interdisciplinary approach to achieving equal access to justice in California. Chaired by Justice Earl Johnson, Jr., of the Court of Appeal,²⁵ the Working Group included private bar leaders, legal services lawyers, pro bono coordinators, alternative dispute resolution experts,

23. See American Bar Association Ad Hoc Committee on State Justice Initiatives, *1998 Summary Report on Justice Initiatives* (visited, Aug. 4, 1998) <<http://scratch.abanet.org/justice/summary/98.html>>.

24. A description of all the justice initiatives reported to the ABA and included in the *1998 Summary Report on Justice Initiatives* can be found at <<http://scratch.abanet.org/justice/summary/98table1.html>>.

25. Justice Johnson is a former director of the OEO Legal Services Program and former professor of law at the University of Southern California.

law professors, social scientists, and members of the judiciary. In July 1996, the State Bar of California Board of Governors unanimously adopted a resolution commending the report of the Working Group. Entitled "And Justice for All: Fulfilling the Promise of Access to Civil Justice in California," the resolution supported in principle the Working Group Report's goal of achieving meaningful access to quality civil justice for all Californians, and directed development of an action plan for implementation. Soon after, the California Commission on Access to Justice (CCAJ) was created and appointments made by numerous entities.

The interdisciplinary Commission is composed of representatives from private firms, legal services, the judiciary (including appointees of the California Judges Association and Judicial Council of California), a law school, a government law office, the California Chamber of Commerce, the California League of Women Voters, the State Legislature, the California Labor Federation and California Council of Churches. CCAJ's goal is threefold:

1. To ensure the right to civil justice for all Californians;
2. To foster systemic improvements in the state's civil justice system that will expand access to the system for all Californians; and
3. To develop adequate funding to provide meaningful access to quality justice for low-and moderate-income people when they need it.

Central to our mission is the understanding that achieving access to civil justice as a matter of right will require the honest commitment and ongoing attention of a broad spectrum from California's public and private sectors. Without the full participation of all stakeholders, meaningful and truly responsive solutions will remain evasive, and advocacy efforts to persuade our state and federal governments to fully fund access will be less likely to succeed.²⁶

The CCAJ Outreach Committee focuses on developing community partnerships. This Committee's primary goal is to raise public awareness about the concept of equal access to civil justice and the societal implications of a lack of access. To this end, its members are developing a series of community forums that will take place in the Central Valley, Southern California, and Northern California. These forums will enable CCAJ to bring together local stakeholders to provide significant opportunities to exchange information about what legal services are available and what needs remain to be filled. Some of the information gathered will also be used to inform the Long-Range Planning Committee's work. Researching the possibility of funding an "access experiment," this committee is

26. AND JUSTICE FOR ALL, *supra* note 1, at xiv.

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studying delivery methods to implement in two California communities in which full access to justice would be guaranteed for two or three years.

CCAJ also has a Courts Committee working to improve access to justice in the court system. Its work includes recruiting the help of experienced colleagues who have implemented successful court delivery systems, focusing on the plight of *pro per* litigants, and educating the judiciary on access issues. The Committee collaborates with the California Judicial Council and other entities.

The CCAJ Pro Bono Committee seeks to increase pro bono activity in California by working with corporate general counsel, local bar associations, and law schools. The Funding Committee is studying several funding options such as workplace giving programs, planned giving campaigns, and legislative agendas.

As it did in establishing CCAJ, the legal profession must lead the way by calling attention to the magnitude of the problem of insufficient representation and by helping to build the necessary coalition to address the issue. Yet the CCAJ and other state justice initiatives also demonstrate that the legal community is not the only stakeholder with an obligation to meet the challenge of providing “equal justice under law.”²⁷

C. The Community of Interests Served When the Entire Community Is Involved

The legal community is but one player trying to meet the goal of equal access to justice; it cannot succeed alone. The legal problems of the poor are also our community’s social problems—unemployment, homelessness, inadequate health care, domestic violence, hopelessness, dependency, and crime. They require holistic solutions. Achieving equal access to justice requires partnerships between the legal community and the government, public, and private sectors throughout California. Community groups, clients, educators, business, and government all need to contribute to designing a delivery system that meets the legal needs of low- and moderate-income Californians. A great deal more money is needed from a variety of sources, especially given the recent cuts in federal grants to legal services for the poor. If funding is not increased, the responsive, efficient, and comprehensive delivery system that local and statewide initiatives envision will not become a reality.

Equal access to civil justice contributes not only to the goal of social justice but also improves the quality of life within our communities and society as a whole. What interests of the community remain unfulfilled when legal needs are left unmet?

27. *Id.* at 47.

1. *Peaceful Resolution of Disputes*

Since California's first legal aid office opened its doors in San Francisco in 1916, legal services programs have promoted an ordered society and the peaceful resolution of disputes through our rules of law. By providing direct legal assistance to millions of this state's poor, legal services programs have promoted confidence among low-income people that our system of laws can work for them.

2. *Helping Welfare Recipients Enter the Mainstream*

Some legal services offices recently have set up programs to assist poor people in setting up their own businesses and redeveloping neighborhood housing, with the help of a national network of pro bono business lawyers.

3. *Strengthening the Business Environment*

California's business community realizes substantial economic benefits when legal services help low-income families become financially self-sufficient by ensuring they obtain equal opportunities to education, employment, and housing. As a group of General Counsels, Presidents and Vice-Presidents of twenty-five California corporations said in a 1995 letter to Senator Dianne Feinstein that urged continued federal funding of legal services for the poor, "[e]ffective legal assistance . . . is clearly necessary for a stable, social and economic climate," and "[e]nsuring low income people's access to the legal system only enhances society's ability to address ever increasing social problems such as homelessness, family violence and unemployment"²⁸

4. *Ensuring Safer Workplaces*

Enabling a battered working woman to obtain legal services to obtain a divorce, child support, or a restraining order helps her and her children, and also results in a safer and more productive workplace for customers, employees and employers. Seventeen percent of fatal injuries to women at work resulted from domestic violence.²⁹ In a survey, forty-nine percent

28. Letter from Imperial Bank, Sumitomo, Bank of America, Wells Fargo, Bank of California, River West Investments, Rockwell International, Hydro-Mill Co., The Vons Co., To-shiba, City of Los Angeles Port Warden/Operations, Kaufman & Broad, the Gap, Guess, Inc., McKeesson, Pacific Telesis Group, ARCO, Teichart Foundation, Times-Mirror Co., Butterfield & Butterfield, Southern California Edison, Tandem Computers Inc., Walt Disney Co., Warner Bros & Spelling Entertainment Group, Inc., to Senator Dianne Feinstein (1995) (on file with the Office of Legal Services, State Bar of California).

29. See U.S. DEPARTMENT OF LABOR, FACTS ON WORKING WOMEN, No. 96-3 (1996).

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of Fortune 1000 companies said domestic violence had a harmful effect on their company's productivity and forty-four percent said domestic violence increased their health care costs.³⁰

5. *Creating Savings to Local and State Governments*

Domestic violence, unemployment, and homelessness are societal problems that affect quality of life and exact financial costs within each of our communities. A legal aid program can spend \$250 per case to prevent homelessness, while a county may spend \$1200 per person for four months of shelter.³¹ Fifty percent of homeless women in California left home to escape violence.³² Legal services that help low-income women and children to obtain child support payments reduce reliance on county welfare rolls. Providing free legal services to twenty low-income disabled persons to obtain SSI/SSA saved one county \$3600 a year per person, or a total of \$76,000.³³ Taxpayers save when neglected and abused children have access to legal services for adoptions and guardianships instead of merely being made wards of the court. Similarly, when legal services lawyers stop the illegal eviction of a family, or help a disabled couple live independently with in-home assistance, the government saves money.

6. *Establishing an Educated Workforce*

Wrongfully excluding low-income youth from school increases crime and produces an uneducated workforce. It costs an estimated \$30,000 per year to house an expelled juvenile student in California's Youth Authority.³⁴

7. *Reducing the Burden on the Court System*

The absence of representation not only disadvantages the litigant, but also burdens other participants in the justice system. Courts must often provide time-consuming information and assistance to *pro per* litigants. Such efforts burden the court and can delay other cases. In addition, responding in this manner may conflict with the requirement that the courts treat opposing parties impartially. More fundamentally, public

30. *See id.*

31. *See Status of Legal Services for the Poor: Impact of Recent Funding Reductions, Hearing Before Judiciary Committee, 103d Cong. 11 (1994).*

32. *See The Needs of Legal Services Clients in California, supra note 5, at 35.*

33. *See id.*

34. Outreach Committee of the Access to Justice Commission, A Call for Equal Access to Civil Justice Brochure 5 (Nov. 1998).

confidence in the justice system lessens when a party's financial position rather than the merits of an issue determine a case's outcome.³⁵

8. *Maintaining Faith in the Justice System*

When people lose confidence in the justice system, they have little reason to support funding for and the independence of judges. The legal profession loses its credibility as a service profession and loses leadership opportunities. Those without access to lawyers view us as "hired guns" bought by the highest bidder. When the legal profession loses credibility, the public will not vote for the legal and structural changes participants in the system identify. History teaches us that free nations are marked by the strength of their justice systems and the independence of a profession able to take action to prevent the loss of legal rights. When we lose the independence of the legal profession and the judiciary, we lose much more. Our democracy is served by the check that the legal system provides. Our people are served by courts that are well run and accessible to all.

III. ACCESS TO JUSTICE IS ATTAINABLE

Despite the magnitude of the problem, there are signs that the general public would support access to justice as we describe it. Several polls conducted during the last twenty years suggest public support for increased access and willingness to invest more tax dollars to realize this goal.

For example, in 1978, the National Center for State Courts commissioned a national opinion poll that asked people which elements of the justice/law enforcement system they preferred to spend their taxes on. Although court improvements did not prove popular, spending more money to provide "lawyers to those who cannot afford their own" garnered the second highest vote (seventy-one percent) of a dozen possibilities. Significantly, this category got twice the support of providing more money for police or prisons.³⁶

In 1981, the *New York Times* conducted a national poll aimed at measuring public support for a range of basic national programs such as education, welfare, and urban aid. Legal services for the poor came in second (eighty-one percent), second only to national defense as the program most deserving of funding.³⁷

35. See AND JUSTICE FOR ALL, *supra* note 1, at 47.

36. See *id.* at 42.

37. See *id.*

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In 1992, the California Vision 2020 project began a study to look at the future of the state's justice system. As part of the effort, the project commissioned a survey of the general public, lawyers, and other justice system professionals. One of the only areas of agreement among all groups was that unequal treatment of the poor plagued the legal system and needed to be addressed.³⁸

Finally, the rise of community involvement in access to justice activities detailed above signals a broadening of the core base of support.

IV. CONCLUSION

Many years ago, Learned Hand gave the legal profession this charge: "Thou shalt not ration justice."³⁹ We must recall that charge, and we must do more. Let us, together with the whole community, multiply and distribute justice broadly by ensuring real and meaningful access for all who seek it, so that the concept of equal justice becomes a rich and fulfilled promise. Let us make the promise of access to justice for all, and let us keep that promise for ourselves, for our children, and for a strong and vibrant future.

38. *See id.*

39. Learned Hand, Address Before the Legal Aid Society of New York (Feb. 16, 1951).

